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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945

No. 1009

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF
AMERICA, PETITIONER.

THE UNITED STATES OF AMERICA

No. 1010

THE BAY COUNTIES DISTRICT COUNCIL OF CARPENTERS OF
THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS
OF AMERICA, ET AL., PETITIONERS.

THE UNITED STATES OF AMERICA

No. 1011

LUMBER PRODUCTS ASSOCIATION, INC., ACME MANUFACTURING
CO., INC., EUREKA SASH, DOOR & MOULDING MILLS, ET AL.,
PETITIONERS.

THE UNITED STATES OF AMERICA

No. 1012

ALAMEDA COUNTY BUILDING AND CONSTRUCTION TRADES
COUNCIL, PETITIONER.

THE UNITED STATES OF AMERICA

No. 1013

BOORMAN LUMBER COMPANY, HOGAN LUMBER COMPANY, LOOP
LUMBER & MILL COMPANY, ET AL., PETITIONERS.

THE UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE NINTH CIRCUIT

PETITIONS FOR CERTIORARI FILED { NOVEMBER 11, 1944.
NOVEMBER 12, 1944.

CERTIORARI GRANTED JANUARY 2, 1945.

No. 10011

United States
Circuit Court of Appeals
For the Ninth Circuit.

LUMBER PRODUCTS ASSOCIATION, INC.,
a corporation, et al.,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record
In Four Volumes
VOLUME I
Pages 1 to 475

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the District Court of the United States of America
for the Northern District of California,
Southern Division.

March 1940 Term

No. 26977-S

United States of America

Northern District of California

Southern Division—ss.

INDICTMENT [1*]

The Grand Jurors of the United States of America, duly empaneled, sworn, and charged in the Dis-

*Page numbering appearing at foot of page of original certified Transcript of Record.

trict Court of the United States for the Southern Division of the Northern District of California, at the July 1939 Term of said Court, having begun but not finished during said July 1939 Term of said Court an investigation of the matters charged in this indictment, and having continued to sit, by order of said Court, in and for said Division and District during the November 1939 and March 1940 Terms of said Court for the purpose of finishing said investigation begun but not finished during the July 1939 Term of said Court, inquiring for said Division and District at the March 1940 Term of said Court, do upon their oaths find and present as follows:

I.

PERIOD OF TIME COVERED BY THE
INDICTMENT

1. Each allegation made in this indictment that an act has been done by defendants herein or by any corporations, associations, or individuals, shall be deemed to refer to the period beginning September 1, 1936, the exact date being to the Grand Jurors unknown, and continuing up to the date of the presentation of this indictment, unless otherwise expressly stated.

II.

DEFINITIONS OF TERMS

2. The term "millwork and patterned lumber" as used herein shall mean lumber which has been planed, cut, or assembled into standard or special patterns or forms, such as moulding, sash, doors,

tongue and groove pattern, shelf pattern, flooring, easing, rustic ceiling, rustic siding, and other wood products prepared [2] for use in the construction of dwellings, buildings, fixtures, and store fronts. It shall also include all wood and the products thereof used in the construction of prefabricated buildings.

3. The term "San Francisco Bay Area" when used herein shall mean the counties of San Francisco, Marin, Contra Costa, Alameda, Santa Clara, and San Mateo, of the State of California.

III.

NATURE OF INTERSTATE COMMERCE INVOLVED

4. Millwork and patterned lumber has been and is manufactured in the State of California and in the San Francisco Bay Area, as well as in a number of states of the United States other than the State of California. Prior to the formation of the combination and conspiracy hereinafter alleged, the 80% of all millwork and patterned lumber used in the San Francisco Bay Area was manufactured in the States of Washington and Oregon and in other states outside of California, and was shipped in interstate commerce into the San Francisco Bay Area. Since the formation of the combination and conspiracy hereinafter alleged, such interstate shipments of millwork and patterned lumber have decreased until, at the present time, less than 10% of the millwork and patterned lumber used in the San Francisco Bay Area is shipped into the area from with-

out the State of California. Numerous manufacturers of millwork and patterned lumber, whose mills are located in the States of Washington and Oregon and in other states outside of California have desired and do now desire to sell millwork and patterned lumber manufactured in their said mills to lumber yards and jobbers located in the San Francisco Bay Area for use in the construction of houses, dwellings, buildings, store fronts, and fixtures, but are unable to do so because of the combination and conspiracy hereinafter alleged. [3]

5. Prior to the formation of the combination and conspiracy hereinafter alleged, the millwork and patterned lumber manufactured in states other than California for use in the San Francisco Bay Area was consigned to builders, building contractors, and millwork jobbers located in the San Francisco Bay Area and shipped in interstate commerce directly to the buildings under construction, or was consigned to lumber yards and jobbers located in the San Francisco Bay Area and shipped in interstate commerce to said lumber yards and jobbers for delivery by them to specific jobs in said area.

6. Millwork and patterned lumber manufactured in the States of Washington and Oregon and in other states outside of California and shipped into the San Francisco Bay Area is usually manufactured at the mills in large quantities by the largest and finest machines available, by mass production methods which often complete, or partially complete, the millwork and patterned lumber in the same

operation that manufactures the lumber from the log. Millwork manufacturers located in the San Francisco Bay Area, including those named as defendants herein, are not, and never have been, mechanically equipped to manufacture millwork and patterned lumber as economically or efficiently, or in as large quantities, or of as high a quality, as is possible in mills located in states other than California in closer proximity to lumber production areas. In addition to the savings accruing by reason of mass production methods said millwork and patterned lumber manufacturers of Washington and Oregon, as well as other states outside of California, while employing union labor and operating entirely union shops, have a lower wage scale than the millwork and patterned lumber manufacturers in the San Francisco Bay Area. This condition [4] existed at the time of the conspiracy and combination hereinafter alleged and has continued at all times during the period of time covered by this indictment.

IV.

THE DEFENDANTS

7. The Lumber Products Association, Inc., referred to hereinafter as "LPA" and included in the designation "Defendant Manufacturers", is hereby indicted and made a defendant herein. Defendant LPA is a corporation organized, existing, and authorized to do business under and by virtue of the laws of the State of California, with its principal place of business at 3196 Twenty-Fourth Street,

San Francisco, California. Since its incorporation in November 1938, defendant LPA has been and is engaged in the business of furnishing to manufacturers and dealers in millwork and patterned lumber certain services which include, among others, trade promotion, cost and price statistics, sales lists, and labor counsel. Manufacturers and dealers to whom such services are rendered by defendant LPA are known as "members" and pay a fee therefor to LPA. Prior to the incorporation of LPA, manufacturers and dealers in millwork and patterned lumber, located in the City and County of San Francisco, secured such services from a voluntary association known as Lumber Products Association of San Francisco. Defendant LPA succeeded to and now continues to carry out the functions of said Lumber Products Association of San Francisco. The members of LPA collectively sell at least 75% of the total millwork and patterned lumber sold in the City and County of San Francisco, California. During the year 1939 defendant LPA had twelve members, including the corporations, firms, and individuals hereinafter named as defendants in paragraph 8 hereof, which defendants sold approximately 80% of the [5] total millwork and patterned lumber sold by all LPA members. Since the incorporation of LPA, the defendants named in paragraph 8 hereof have controlled and do control and dominate the actions of defendant LPA by selecting from among themselves the officers, directors, and committees of said defendant.

8. The following named individuals, partnerships and corporations, hereinafter included in the designation "Defendant Manufacturers", are hereby indicted and made defendants herein. Each of said defendants is a member of LPA and is engaged in the manufacture and sale of millwork and patterned lumber in the San Francisco Bay Area and more particularly in the City and County of San Francisco. The legal status and principal place of business or residence of the owners are indicated below.

Name	Legal Status	Names of Partners or Individual	Principal Place of Business or Residence	State of Incorporation
Aeme Manufacturing Co., Inc.	Corporation		345 Bay Shore Boulevard San Francisco	California
J. A. Hart Mill & Lumber Co.	Individual	John A. Hart	Jerrold and Napoleon Streets San Francisco	
Warden Brothers	Partnership	Anna K. Warden Carl A. Warden	2501 Army Street San Francisco	
Brannan Street Planing Mill	Partnership	Albert B. Veyhle and Charles Gustafson	560 Brannan Street San Francisco	
W. P. Holmes Mill & Cabinet Shop	Individual	William P. Holmes	Sixth and Channel Streets San Francisco	
Sage & Wilder	Partnership	Jesse L. Sage Christian A. Wilder	2156 San Bruno Avenue San Francisco	
Liberty Mill & Cabinet Shop	Individual	Bernard Tanklage	1433 Van Dyke Avenue San Francisco	
Eureka Sash, Door & Molding Mills	Corporation		1715 Mission Street San Francisco	[6] California

9. Wood Products, Inc., referred to hereinafter as "Wood Products" and included in the designation "Defendant Manufacturers", is hereby indicted and made a defendant herein. Defendant Wood Products is a corporation organized, existing, and authorized to do business under and by virtue of the laws of the State of California, with its principal place of business at 1924 Broadway, Oakland, California. Since its incorporation in April 1939, defendant Wood Products has been and is engaged in the business of furnishing to manufacturers and dealers in lumber and millwork certain services which include, among others, trade promotion, cost and price statistics, sales lists, and labor counsel. Manufacturers and dealers receiving such services from Wood Products are known as "subscribers" and pay a fee for the services rendered to them. Prior to the incorporation of defendant Wood Products, manufacturers and dealers in millwork and patterned lumber located in the City of Oakland, California, secured such services from an unincorporated association known as the East Bay Mill Owners Association. Defendant Wood Products succeeded to and now continues to carry out the functions of said East Bay Mill Owners Association. The subscribers composing defendant Wood Products sell at least 75% of the total millwork and patterned lumber sold in the City of Oakland, California. During the year 1939 defendant Wood Products had approximately sixty-five subscribers, which number included the corporations, firms, and individuals named as defendants [7] in

paragraph 10 hereof, which defendants sold 80% of the total millwork and patterned lumber sold by Wood Products subscribers.

10. The following named individuals, partnerships, and corporations, included in the designation "Defendant Manufacturers", are hereby indicted and made defendants herein. Each of said defendants is a subscriber to the services of defendant Wood Products and is engaged in the manufacture and sale of millwork and patterned lumber in the San Francisco Bay Area and more particularly in Alameda County. The legal status and principal place of business or residence of the owners are indicated below.

Name	Legal Status	Names of Partners or Individual	Principal Place of Business or Residence	State of Incorporation
Boorman Lumber Co.	Corporation		1003 East 14th Street, Oakland	California
Hill Lumber & Hardware Company	Corporation		Brighton and Alameda Streets, Albany	California
Hogan Lumber Co.	Corporation		255-2nd Street Oakland	California
Loop Lumber & Mill Company	Corporation		Broadway and Blanding, Alameda	California
Loop Lumber Co.	Corporation		Foot of 16th Street San Francisco	California
San Leandro Mill & Lumber Co.	Individual	Robert W. Shannon	400 Davis Street San Leandro	
San Pablo Lumber Co.	Partnership	Andrew Nelson Albert C. Nelson	10th and Ohio Streets, Richmond	
Smith Lumber Company	Corporation		19th Avenue and Estuary, Oakland	California
Tilden Lumber Company	Corporation		Foot of University Avenue, Berkeley	[8] California
E. K. Wood Lumber Company	Corporation		Frederick and King Streets, Oakland	California
Zenith Mill & Lumber Company	Corporation		2101 East 12th Street Oakland	California
Eureka Mill & Lumber Co.	Corporation		3737 San Leandro Street, Oakland	California
Hayward Mill & Lumber Co.	Individual	Nels E. Nelson	1 Castro Street Hayward	

11. Commercial Fixture and Store Front Institute, hereinafter designated as "Commercial Fixture" and included in the designation "Defendant Manufacturers", is hereby indicted and made a defendant herein. Said defendant Commercial Fixture is a corporation, organized and authorized to do business, under and by virtue of the laws of the State of California, with its principal place of business at 74 New Montgomery Street, San Francisco, California. Since its incorporation in January 1939 defendant Commercial Fixture has been and now is engaged in the business of furnishing to manufacturers and dealers in millwork and patterned lumber certain services which include, among others, trade promotion, cost and price statistics, sales lists, and labor counsel. Manufacturers and dealers receiving such services from Commercial Fixture are known as "members" and pay a fee for the services rendered to them. Prior to the incorporation of defendant Commercial Fixture the manufacturers and dealers now members of said defendant secured such services from a corporation known as "Cabinet Manufacturing & Lumber Products, Inc." Defendant Commercial Fixture succeeded to and now continues [9] to carry out the functions of said Cabinet Manufacturing & Lumber Products, Inc. Defendant Commercial Fixture has twelve members, including the corporations, firms and individuals named as defendants in paragraph 12 hereof, which defendants do in the aggregate more than 90% of the construction of cabinets and store fronts in the San Francisco Bay Area.

12. The following named individuals, partnerships, and corporations, hereinafter included in the designation "Defendant Manufacturers", are hereby indicted and made defendants herein. Each of said defendants is a member of defendant Commercial Fixture and is engaged in the manufacture and sale of millwork and patterned lumber in the San Francisco Bay Area. The legal status and principal place of business or residence of the owners are indicated below.

Name	Legal Status	Names of Partners or Individual	Principal Place of Business or Residence	State of Incorporation
Mullen Manufacturing Company	Corporation		64-80 Rausch St. San Francisco	California
Mangrum, Holbrook & Elkus	Corporation		301 Golden Gate Avenue, San Francisco	California
Ful-Vue Fixture Co.	Individual	Joseph J. Schmidt	75 Oak Grove St. San Francisco	
Fink & Schindler Co.	Corporation		552 Brannan St. San Francisco	California
Exposition Wood Working Co.	Partnership	George Randolph Herman Sichel	661 Golden Gate Avenue San Francisco	
L. & E. Emanuel, Inc.	Corporation		2665 Jones St. San Francisco	California
Wm. Bateman	Partnership	Ella Bateman Jessie Bateman Phylliss Dennis	1915 Bryant St. San Francisco	
Uni-Bilt Fixture Co.	Individual	Leo Roselyn	298-8th St. San Francisco	
H. Schulte & Son	Individual	Henry A. Schulte	39-40 Rodgers St. San Francisco	
Ostlund & Johnson	Individual	Oscar H. Ostlund	1901 Bryant St. San Francisco	
Brass & Kuhn Company	Corporation		1917 Bryant St. San Francisco	California
S. Kuleher & Co.	Individual	S. Kuleher	731 East Tenth St. Oakland	

13. The following named corporations, hereinafter included in the designation "Defendant Manufacturers", are hereby indicted and made defendants herein. Each of said defendants is duly authorized to do business under and by virtue of the laws of the State of California, and has its principal place of business as indicated. Each of said defendants is engaged in the business of manufacturing and selling millwork and patterned lumber.

Name of Corporation	Principal Place of Business	State of Incorporation
Pacific Manufacturing Co.	Santa Clara, Calif.	California
Redwood Manufacturers Co.	Pittsburg, Calif.	California

14. The United Brotherhood of Carpenters and Joiners of America, hereinafter included in the designation "Defendant Unions", having its headquarters and general offices at Indianapolis, Indiana, is hereby indicted and made a defendant herein. Said defendant is a voluntary, unincorporated association of individuals. It is a national trade union of carpenters and joiners and has a membership of approximately 350,000 persons. It is affiliated with and acts as advisor to, supervisor of, and governing body for carpenters' local unions and carpenters' district and state councils in the United States of America, including the Bay Counties District Council of Carpenters, and other local union organizations named as defendants herein. [11]

15. The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, hereinafter included in the

designation "Defendant Unons", having its general offices and principal place of business at 200 Guerrero Street, San Francisco, California, is hereby indicted and made a defendant herein. Said defendant is a voluntary, unincorporated association of individuals. It is advisor to, supervisor of, and governing body for local millmen's and carpenters' unions in the San Francisco Bay Area, including the local union organizations named as defendants herein. It is affiliated with the United Brotherhood of Carpenters and Joiners of America. Its membership consists of delegates from the affiliated local unions.

16. The San Francisco Building and Construction Trades Council, hereinafter included in the designation "Defendant Unions", having its general offices and principal place of business at 200 Guerrero Street, San Francisco, California, is hereby indicted and made a defendant herein. Said defendant is a voluntary, unincorporated association of individuals. It is advisor to, supervisor of, and governing body for unions composed of laborers engaged in building and construction trades in the City and County of San Francisco, California. Its membership consists of delegates from the affiliated local unions.

17. The Alameda County Building and Construction Trades Council, hereinafter included in the designation "Defendant Unions", having its principal place of business and general offices at 2111 Webster Street, Oakland, California, is hereby indicted and made a defendant herein. Said defendant is a volun-

tary, unincorporated association of individuals. It is advisor to, supervisor of, and governing body for unions composed of laborers engaged in building and construction trades in the County of Alameda, California. Its [11a] membership consists of delegates from the affiliated local unions.

18. The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 42, hereinafter included in the designation "Defendant Unions", having its headquarters and principal offices at 200 Guerrero Street, San Francisco, California, is hereby indicted and made a defendant herein. Said defendant is a voluntary, unincorporated association of individuals. It is a trade union of millworkers, and is affiliated with the United Brotherhood of Carpenters and Joiners of America, the Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, and with the other local union organizations named as defendants herein. Said defendant is sometimes referred to hereinafter as Millmen's Union No. 42.

19. The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 550, hereinafter included in the designation "Defendant Unions", having its headquarters and principal offices at 2111 Webster Street, Oakland, California, is hereby indicted and made a defendant herein. Said defendant is a voluntary, unincorporated association of individuals. It is a trade union of millworkers, and is affiliated with the United Brotherhood of Carpen-

ters and Joiners of America, the Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, and with the other local union organizations named as defendants herein. Said defendant is sometimes referred to hereinafter as Millmen's Union No. 550.

20. The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 1956, hereinafter included in the designation "Defendant Unions", having its headquarters and principal offices at Pittsburg, California, is hereby indicted and made a [12] defendant herein. Said defendant is a voluntary, unincorporated association of individuals. It is a trade union of millworkers, and is affiliated with the United Brotherhood of Carpenters and Joiners of America, the Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, and with the other local union organizations named as defendants herein.

21. The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 262, hereinafter included in the designation "Defendant Unions", having its headquarters and principal offices at Santa Clara, California, is hereby indicted and made a defendant herein. Said defendant is a voluntary, unincorporated association of individuals. It is a trade union of millworkers, and is affiliated with the United Brotherhood of Carpenters and Joiners of America, and with the other local union organizations named as defendants herein. Said defendant is sometimes referred to hereinafter as Millmen's Union No. 262.

22. The following named individuals are hereby indicted and made defendants herein (Christian names unknown to the Grand Jurors being indicated by initial letters or by the designation "John Doe"). Each of said individual defendants, during part or all of the period covered by the indictment, has been actively engaged in the management, direction, or control of the affairs, policies, and acts of the respective defendant manufacturers or unions indicated, and has authorized, ordered, or done acts constituting the offense hereinafter charged in the indictment.

Carl Warden, president of The Lumber Products Association, Inc., and partner in Warden Bros.

Harry W. Gaetjen, secretary of The Lumber Products Association, Inc. [13]

Charles Monson, president of The Lumber Products Association, Inc., and president of the Acme Manufacturing Co., Inc.

Fred Spencer, president of the Eureka Sash Door & Moulding Mills.

D. N. Edwards, a director of Wood Products, Inc.

Gordon D. Pierce, president of the Boorman Lumber Co.

Albert P. Hill, president of the Hill Lumber & Hardware Company.

Thomas P. Hogan, Jr., president of the Hogan Lumber Co.

William Chathan, president of the Loop Lumber & Mill Company.

Reginald Smith, vice-president of the Smith Lumber Company.

Victor J. Herrmann, president of the Tilden Lumber Company.

John B. Wood, vice-president of the E. H. Wood Lumber Company.

Roy M. Dreisbach, vice-president of the Zenith Mill & Lumber Company.

Clarence I. Gilbert, president of the Eureka Mill & Lumber Co.

John Mullen, president of the Commercial Fixture and Store Front Institute.

J. G. Ennes, secretary-manager of the Commercial Fixture and Store Front Institute.

Eugene S. Elkus, president of Mangrum, Holbrook & Elkus.

Charles F. Stauffacher, president of the Fink & Schindler Co.

Joseph L. Emanuel, president of L. & E. Emanuel, Inc.

Richard Kuhn, president of Brass & Kuhn Company.

J. L. Pierce, president of the Pacific Manufacturing Company.

C. J. Wood, president of the Redwood Manufacturers Company.

J. F. Cambiano, a duly authorized and acting representative of the International Brotherhood of Carpenters and Joiners of America, and

president of the State Council of Carpenters. Dave Ryan, secretary of the Bay Counties District Council of Carpenters and secretary of the State Council of Carpenters.

James Ricketts, a duly authorized and acting representative of the San Francisco Building and Construction Trades Council.

John Doe McGinnis, a duly authorized and acting representative of the Alameda County Building and Construction Trades Council. [14]

Charles Roe, a duly authorized and acting representative of the Alameda County Building and Construction Trades Council.

Charles Helbing, business agent of Millmen's Union No. 42.

D. J. Edwards, president of Millmen's Union No. 42.

W. P. Kelly, president of Millmen's Union No. 42.

H. Lidley, president of Millmen's Union No. 42.

W. L. Wilcox, president and business agent of Millmen's Union No. 42.

Walter O'Leary, business agent of Millmen's Union No. 550.

M. D. Cicinato, president of Millmen's Union No. 550.

J. P. Sholden, president of Millmen's Union No. 550.

C. H. Irish, president of Millmen's Union No. 550.

John Doe Smoot, president of Millmen's Union No. 262.

Otto W. Sammet, a duly authorized and acting representative of Millmen's Union No. 42.

Emil H. Ovenberg, a duly authorized and acting representative of Millmen's Union No. 550.

V.

**POWER OF DEFENDANTS IN CONCERT TO
RESTRAIN AND OBSTRUCT INTER-
STATE COMMERCE.**

23. Substantially all of the millwork and patterned lumber manufactured in the San Francisco Bay Area is manufactured by the millwork and patterned lumber manufacturers who are named as defendants in paragraphs 7 through 13 of this indictment. Said manufacturers employ only those millworkers who are affiliated with the union organizations named as defendants in paragraphs 14 through 21 inclusive of this indictment.

24. All laborers in the San Francisco Bay Area who are skilled in the work incident to the manufacture and installation of millwork and patterned lumber must be affiliated with the union organizations made defendants in paragraphs 14 through 21 inclusive of this indictment in order to be employed by defendant manufacturers. [15].

25. As a result, the defendant unions have obtained control of the supply of workmen available to perform the work incident to the manufacture and

installation of millwork and patterned lumber in the San Francisco Bay Area. All of the defendant unions are affiliated with the American Federation of Labor and are represented upon the Alameda County Building and Construction Trades Council or upon the San Francisco Building and Construction Trades Council, which organizations are composed of representatives of substantially all local building and construction trade unions in the San Francisco Bay Area. In this manner the defendant unions have been able to and have obtained from said councils, and other labor unions engaged in the building and construction industry in said area, assistance and cooperation in securing the observance of and compliance with the rules, regulations, and policies which have been promulgated by said defendant unions. All laborers who are members of, or who are affiliated with defendant unions are bound to observe the rules, regulations, policies, and obligations of said defendants.

COUNT ONE

VI.

THE CONSPIRACY

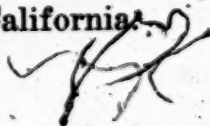
26. Beginning on or about September 1, 1936, the exact date being to the Grand Jurors unknown, and continuing to the date of the presentation of this indictment, in the Northern District of California and within the jurisdiction of this Court, the defendants herein named and other persons to the Grand Jurors unknown, well knowing all of the foregoing facts,

have combined and conspired together for the purpose of unduly, unreasonably, and directly restraining interstate trade and commerce in millwork and patterned lumber as above defined, and, as intended by them, have [16] unduly, unreasonably, and directly restrained said interstate trade and commerce. In so doing, the defendants have then and there engaged in an unlawful combination and conspiracy in restraint of the trade and commerce in millwork and patterned lumber among the several states of the United States in violation of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Antitrust Act. Said combination and conspiracy is hereinafter more particularly described.

27. The general purpose, object, and effect of the said unlawful combination and conspiracy has been and is:

(a) To exclude manufacturers of millwork and patterned lumber located in states other than California from selling millwork and patterned lumber in the San Francisco Bay Area and from shipping such millwork and patterned lumber in interstate trade and commerce into the San Francisco Bay Area.

(b) To curtail, restrict, and prevent lumber yards and jobbers in the San Francisco Bay Area from purchasing and shipping, or causing to be shipped in interstate commerce into the San Francisco Bay Area, millwork and patterned lumber manufactured in states other than California.



(c) To raise, fix, stabilize, and maintain prices for millwork and patterned lumber shipped in interstate commerce into the State of California for sale in the San Francisco Bay Area.

28. For the purpose of effectuating said unlawful combination and conspiracy in restraint of the aforesaid interstate trade and commerce, defendants have employed divers means and methods, including those hereinafter alleged, and other means and methods to [17] the Grand Jurors unknown:

(a) During the year 1936, the exact date being to the Grand Jurors unknown, the defendant manufacturers agreed to accede and did accede to wage scale demands of defendant unions, in return for which the defendant unions agreed to engage and have engaged in activities which were intended to prevent and did prevent the sale and shipment of millwork and patterned lumber into the San Francisco Bay Area by manufacturers located outside the State of California.

(b) Pursuant to said understanding set out in paragraph 28, subparagraph (a), the defendants, on or about the 21st day of September, 1936, entered into a contract and agreement covering the wages to be paid to the members of defendant unions, in which said agreement it was further agreed that: "... no material will be purchased from, and no work will be done on any material or article that has had any operation

performed on same by Saw Mills, Mills or Cabinet Shops, or their distributors that do not conform to the rates of wage and working conditions of this agreement." (except certain named items).

(c) The defendants have continued, in full force and effect, by subsequent agreements and understandings, the provisions of said agreement described in paragraph 28, subparagraph (b) with reference to the restriction on millwork and patterned lumber manufactured at lower wage rates than those then in force in the San Francisco Bay Area.

(d) In order to enforce the provisions of the con- [18] tract and agreement described in paragraph 28, subparagraph (b) hereof, the defendants have, at all times during the period covered by this indictment, maintained a joint conference board composed of representatives of the defendant manufacturers and representatives of the defendant unions.

(e) The joint conference board described in paragraph 28, subparagraph (d) hereof, has held regular weekly meetings (the exact dates of which are to the Grand Jurors unknown), for the purpose of supervising, and it has supervised and carried on, the enforcement of the provisions of the contract, agreements and understandings set out in paragraph 28, subparagraphs (b) and (c) hereof.

(f) Defendants have at various times in-

terchanged information relative to the shipments of millwork and patterned lumber to the San Francisco Bay Area from states other than California for the purpose of enforcing the provisions of the contract, agreements, and understandings described in paragraph 28, subparagraphs (b) and (c) hereof.

(g) Defendants have counseled together, advised, and agreed upon courses of action relative to the enforcement of the provisions of said contract, agreements and understandings described in paragraph 28, subparagraphs (b) and (c) hereof.

(h) Defendants, in June 1937 (the exact date being to the Grand Jurors unknown) prevented the sale and delivery of a carload of millwork and patterned lumber in the San Francisco Bay Area, which had been shipped in interstate commerce from the Ewauna Box Company at Klamath [19] Falls, Oregon, to Chris M. Wininger for sale in the San Francisco Bay Area; and the defendants have, on other dates unknown to the Grand Jurors, prevented the sale and delivery of carloads of millwork and patterned lumber in the San Francisco Bay Area which had been shipped in interstate commerce from states other than California for sale in the San Francisco Bay Area.

(i) Defendants, in June 1938 (the exact date being to the Grand Jurors unknown), by means of pickets and threats to picket, forced the

Jones Hardwood Company of San Francisco to cancel an order for millwork and patterned lumber from the Roddis Lumber and Veneer Company of Marshfield, Wisconsin, which millwork and patterned lumber was to have been shipped in interstate commerce to the San Francisco Bay Area; and the defendants have, at various dates to the Grand Jurors unknown, forced other purchasers of millwork and patterned lumber to cancel orders for millwork and patterned lumber from manufacturers located in states other than California.

(j) Defendants, in furtherance of said combination and conspiracy hereinabove alleged, did, in January 1938, the exact date being to the Grand Jurors unknown, and on various other occasions, the exact dates being to the Grand Jurors unknown, by means of pickets and threats to picket, prevent the unloading of railroad freight cars bearing millwork and patterned lumber in transit from states other than California to the San Francisco Bay Area, and have thus restrained and prevented the purchase of millwork and patterned lumber from manufacturers located in states other than California for shipment and delivery to the San Francisco Bay Area. [20]

(k) Defendants, in furtherance of the combination and conspiracy hereinabove alleged, have and do at regular intervals publish and circulate, or cause to be published and circu-

lated among millwork and patterned lumber manufacturers in the San Francisco Bay Area (including those named as defendants herein), and among jobbers and lumber yards in said area, certain price lists and market reports, which lists set out, among other things, the agreed price to be charged for millwork and patterned lumber in the San Francisco Bay Area, which price lists and market reports were designed and intended to be used, and were and are used, as price lists in the sale of millwork and patterned lumber in the San Francisco Bay Area by said millwork and patterned lumber manufacturers, jobbers, and lumber yards, which has resulted in raising, maintaining, and stabilizing the price of millwork and patterned lumber in said area at an unreasonable, artificial, and noncompetitive price.

29. In joining the said combination, agreement, and conspiracy, and in performing and carrying out acts to effectuate the said conspiracy, the defendant unions were not attempting to enforce or protect the right to bargain collectively nor did they act in the course of a legitimate labor dispute as to wages, hours, and working conditions or as to any other legitimate objective of labor, but solely to prevent the manufacturers against whom the said combination and conspiracy was directed from engaging in interstate commerce in millwork and patterned lumber in the San Francisco Bay Area and to maintain arbitrary, artificial, and noncompetitive prices. [21]

VII.

EFFECT OF CONSPIRACY

30. The things done and the acts performed pursuant to and in furtherance of the combination herein alleged and described have had the effect of preventing persons, partnerships, and corporations located in the San Francisco Bay Area from purchasing millwork and patterned lumber manufactured in states other than California for shipment into the San Francisco Bay Area. As a result of said combination and conspiracy, the prices of millwork and patterned lumber used in the construction of homes and other buildings in the San Francisco Bay Area have been arbitrarily, unduly and unreasonably increased.

VIII.

JURISDICTION AND VENUE

31. The combination and conspiracy hereinbefore alleged has been formed and carried on by the defendants within the Southern Division of the Northern District of California, and has continued therein from the day of its formation to and including the date of the presentation of this indictment. Throughout the period covered by this indictment, all of the acts and things alleged in paragraph 28 of this indictment have been done and have taken place within the said District.

COUNT TWO

32. The language of paragraphs 1 to 25—28 and 29 inclusive of this indictment is hereby realleged and incorporated herein as if hereinafter set forth in full.

IX.

THE CONSPIRACY

33. And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present that, during the period aforesaid and continuously therein up to and including the date of the presentment of this indictment, in the Northern District of California and within the jurisdiction of this Court, all of the defendants [22] named herein and other persons to the Grand Jurors unknown, well knowing all the facts hereinbefore alleged in this indictment, unlawfully have combined and conspired together and engaged with one another in an attempt to monopolize part of the trade and commerce among the several states in the sale of millwork and patterned lumber in the San Francisco Bay Area in the State of California. In so doing, the defendants have then and there combined and conspired among themselves to monopolize and did attempt to monopolize a part of the trade and commerce in millwork and patterned lumber among the several states, in violation of Section 2 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies", known as the Sherman Act.

34. It was and is a part of said combination and conspiracy and the object and purpose thereof to accomplish and do the following, among other things, to wit:

(a) To create and maintain among the defendants a monopoly of the business of selling and distributing millwork and patterned lumber shipped in interstate commerce into the San Francisco Bay Area;

(b) To prevent, eliminate, and suppress all competition in the manufacture and sale of millwork and patterned lumber from manufacturers and dealers outside of the San Francisco Bay Area and the State of California;

(c) To establish and maintain uniform, monopolistic and noncompetitive prices for the sale of millwork and patterned lumber shipped in interstate commerce into the San Francisco Bay Area;

(d) To eliminate and prevent all millwork and pat- [23] terned lumber manufacturers and dealers, other than those having their principal place of business and mill in the San Francisco Bay Area, from engaging in the sale and distribution of millwork and patterned lumber in said area. .

35. Said unlawful attempt to monopolize the sale of millwork and patterned lumber in interstate trade and commerce was intended to be effected, and has been effected in part by divers means and methods

including, among others, the following, that is to say:

(a) Contracts were entered into between the defendants which provided, among other things: "that no material will be purchased from, and no work will be done on any material or article that has had any operation performed on same by Saw Mills, Mills or Cabinet Shops, or their distributors that do not conform to the rates of wage and working conditions of this Agreement" (excepting certain named items);

(b) The defendant unions have from time to time demanded that millwork and patterned lumber be purchased only from manufacturers acceptable to said unions;

(c) The agreements and demands aforesaid were enforced by picketing, threatened picketing, and divers other means of intimidation and coercion.

X.

JURISDICTION AND VENUE

36. The said combination and conspiracy to monopolize a part of the interstate trade and commerce in millwork and patterned lumber was formed in the San Francisco Bay Area in the Southern Division of the Northern District of California, and all of the acts and things set out in paragraph 35 of this [24] indictment have been done and have taken place within the said District.

37: And so the Grand Jurors aforesaid, upon their oaths aforesaid, do further present that the defendants named at the time and place and in the manner and form aforesaid, unlawfully have combined and conspired to restrain trade and commerce in millwork and patterned lumber in the several states of the United States and have attempted to monopolize millwork and patterned lumber shipped in interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such cases made and provided.

FRANK J. HENNESSY

United States Attorney

TOM C. CLARK

MORRIS R. CLARK

CHARLES S. BURDELL

JAMES E. HARRINGTON

Special Assistants to the Attorney General

Attorneys for the United States of America

A True Bill:

GEO. A. VAN SMITH,

Foreman. [25]

[Endorsed]: A True Bill.

GEORGE A. VAN SMITH,

Foreman.

Presented in open Court and Ordered filed June 26, 1942.

Bail, \$1000.00 each: [26]

District Court of the United States
Northern District of California
Southern Division

No. 26977.

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 15th day of July, in the year of our Lord one thousand nine hundred and forty.

Present: The Honorable A. F. St. Sure, District Judge.

No. 26977.

[Title of Cause.]

ARRAIGNMENT

This case came on this day for arraignment of the defendants. The hereinafter named defendants were present.

Acme Manufacturing Co.,

by Charles Monson, its President;

Brannan Street Planing Mill,

by Charles Gustafson;

Eureka Sash Door & Moulding Mills,

by Fred Spencer, Vice-President;

J. A. Hart Mill & Lumber Co.,

by J. A. Hart, Owner;

The Lumber Products Association, Inc.,

by Charles Monson, President, [27]

Sage & Wilder,

by Christian Wilder, Partner;

W. P. Holmes Mill & Cabinet Shop,

by William P. Holmes, Owner;

Warden Brothers,

by Carl Warden, Partner;

Harry W. Gaetjen; Charles Monson; Fred Spencer;
Carl Warden; were present in Court with J. M.
Thomas, Esq., their Attorney.

The Alameda County Building and Construc-
tion Trades Council,

by Charles Roe;

The Bay Counties District Council of Carpen-
ters of the United Brotherhood of Carpenters
and Joiners of America

by David Ryan, Secretary,

The United Brotherhood of Carpenters and
Joiners of America Millmen's Union No. 42,

by Charles Helbing;

The United Brotherhood of Carpenters and
Joiners of America Millmen's Union No. 550.

by Emil Ovenberg;

J. F. Cambiano; D. J. Edwards; Charles Helbing;
C. H. Irish; W. P. Kelly; * * * ; Walter O'Leary;
Emil H. Ovenberg; * * * ; Charles Roe; Dave Ryan;
* * * ; * * * ; * * * ; * * * ; W. L. Wilcox were pres-
ent in Court with Hugh K. McKevitt, Esq., their
Attorney. [28]

Boorman Lumber Co.,

by George Clayberg, Manager;

Eureka Mill & Lumber Co.;
 Hayward Mill & Lumber Co.,
 by Nels C. Nelson, Owner;

* * * * *

Hogan Lumber Co.,
 by Thomas P. Hogan, Jr., President;
 San Leandro Mill & Lumber Co.,
 by R. W. Shannon, Owner;
 San Pablo Lumber Co.,
 by A. C. Nelson, Partner,

~~Tilden~~ Lumber Co.,
 by Victor J. Herrmann, President;
 E. K. Wood Lumber Company;
 by John B. Wood, President;
 Wood Products, Inc.,
 by David N. Edwards, Director;
 Zenith Mill & Lumber Co.;

D. N. Edwards; Victor J. Herrmann; * * * * *;
 Thomas P. Hogan, Jr.; and John B. Wood; were
 present in Court with their Attorney Morgan J.
 Doyle, Esq.

* * * * *

Loop Lumber Co.,
 by William Chatham, President;
 Loop Lumber & Mill Company,
 by William Catham, President.

William Catham; were present in Court with their
 Attorney, Howell Lovell, Esq. [29]

* * * * *

Smith Lumber Co.,
 by Reginald Smith, Vice-President;

and Reginald Smith were present in Court with their Attorney, M. R. Carey, Esq.

Charles Burdell, Esq., Special Assistant to the Attorney General, was present for and on behalf of the United States:

Thereupon the foregoing defendants were called for arraignment. Said defendants were informed of the return of the Indictment by the United States Grand Jury and asked if they were the persons named therein and, upon their answer that they were, and that their true names were as hereinbefore stated, said defendants were informed of the charges against them, and stated they understood the same. The respective Attorneys, on behalf of the defendants, orally waived the reading of the Indictment.

Mr. McKevitt advised the Court that he was appearing specially upon behalf of the United Brotherhood of Carpenters and Joiners of America, and stated that its true name was as charged.

Upon motions of the Attorneys for the respective defendants, and with the consent of Mr. Burdell, It Is Ordered that this case be and the same is hereby continued [30] to August 19, 1940, for entry of the pleas of the said defendants.

United States District Court
Northern District of California
Southern Division

No. 26977S

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

LUMBER PRODUCTS ASSOCIATION, INC.,
et al,

Defendants.

DEMURRER OF CERTAIN DEFENDANTS
TO INDICTMENT.

Come now the defendants the United Brotherhood of Carpenters and Joiners of America, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 42, the United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 550, The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 1956, The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 262, The Alameda County Building and Construction Trades Council, J. F. Cambiano, Dave Ryan, James Ricketts, Charles Roe, Charles Helbing, D. J. Edwards, W. P. Kelly, H. Lidley, W. L. Wilcox, Walter O'Leary, [32] M. D. Cicinato, J. P.

Sholden, C. H. Irish, George S. Sinoot, Otto W. Sammet, and Emil H. Ovenberg, and without waiving their rights, or the rights of any of them, to hereafter plead not guilty, separately and severally file this demurrer to the indictment in the above entitled proceeding, and for grounds of demurrer each defendant specifies:

I.

That said indictment as a whole, and each count thereof considered separately, fails to allege facts sufficient to constitute a public offense under the laws of the United States.

II.

That said indictment as a whole, and each count thereof considered separately, fails to alleged facts sufficient to show the commission by these demurring defendants, or any of them, of a public offense under the laws of the United States.

III.

That said indictment does not allege facts sufficient to bring the same within the provisions of any statute of the United States, and no crime against the laws of the United States is charged in said indictment, or either count thereof, against these defendants.

IV.

That said indictment fails to allege facts sufficient to constitute a violation of Section 1, Title 15, U.S.C.A.

V.

That said indictment fails to show a violation by these demurring defendants, or any of them, of Section 1, Title 15, U.S.C.A.

VI.

That said indictment fails to allege facts sufficient to constitute a violation of Section 2, Title 15, U.S.C.A. [33]

VII.

That said indictment fails to show a violation by these demurring defendants, or any of them, of Section 2, Title 15, U.S.C.A.

VIII.

That the acts complained of in said indictment, and each count thereof, as to these defendants do not in any manner violate Sections 1 or 2, Title 15, U.S.C.A.

IX.

That as to said indictment as a whole, and each count separately, the above entitled Court is without jurisdiction of the subject matter, in that no unlawful act or thing alleged to have been done by these defendants, or any of them, relates to a transaction in interstate commerce.

X.

That said indictment as a whole is ambiguous and unintelligible and replete with redundant matter and surplusage to such an extent that these demurring defendants and each of them are not advised thereby of the nature of the charge against them, or any of them, so that they, or any of them,

may properly prepare and submit their defense thereto.

XI.

That the first alleged count contained in said indictment is duplicitious in that said count purports to contain several alleged offenses which are not separately stated, to wit: The joining and engaging in an alleged combination, the joining and engaging in an alleged conspiracy, and the doing of certain substantive acts, including the making and carrying out of a contract alleged to be in restraint of interstate commerce.

XII.

That the second alleged count contained in said indictment is duplicitious in that said count purports to contain several [34] alleged offenses which are not separately stated, to wit: The joining and engaging in an alleged combination, the joining and engaging in an alleged conspiracy, and the making of a contract to monopolize millwork and patterned lumber, and to create monopolistic and non-competitive prices therefor.

XIII.

That the first alleged count contained in said indictment is indefinite, uncertain, ambiguous and unintelligible in that it does not appear therein nor can it be ascertained therefrom

(a) What other states besides Washington and Oregon manufactured millwork and patterned lumber used in the San Francisco Bay Area and

shipped in interstate commerce, as alleged in paragraph 4, page 3, part III.

(b) Whether all manufacturers outside of California operate entirely Union shops, with a lower wage scale than the millwork and patterned lumber manufacturers in the San Francisco Bay Area, as alleged in paragraph 6, page 4, part III.

(c) Whether wood materials used by defendant manufacturers are shipped in interstate commerce;

(d) How and in what manner the affairs, policies and acts of these defendants, or any of them, constitute an offense against the laws of the United States, as alleged in paragraph 22, page 14, part IV;

(e) What acts had been done by these defendants, or any of them, constituting the alleged offense attempted to be charged in said indictment, as set forth in paragraph 21, page 14, part IV;

(f) What, if any, act has been done by these defendants, or any of them, which violates the Sherman Anti-Trust Act;

(g) The time and place of the doing of any act alleged to constitute an offense charged in the indictment; [35]

(h) What acts these defendants, and each of them, have authorized or ordered which constitute an offense against the laws of the United States;

(i) How the observance or compliance with the rules, regulations and policies promulgated by defendant Unions would constitute a public offense as alleged in paragraph 25, page 17, part V.

(j) What rules, regulations, policies or obligations of defendant Unions all affiliated laborers or members are bound to observe, and what effect such observance has upon a public offense under the laws of the United States;

(k) When and at what time and at what place each of these defendants entered the combination or conspiracy attempted to be alleged in said indictment.

(l) How and in what manner, except for the conclusion of the pleader, these defendants, or any of them, have unduly or unreasonably or directly restrained interstate trade and commerce, as alleged in paragraph 26, pages 17 and 18, part VI;

(m) How and in what manner any act or thing alleged directly affected interstate commerce or discriminated against such commerce or in any wise affected it other than incidentally with all other commerce;

(n) How the stabilization and maintenance of millwork and patterned lumber prices would constitute a violation of Section 1, Title 15, U.S.C.A.;

(o) What divers means and methods these defendants, or any of them, have used as alleged in paragraph 28, page 18, part VI;

(p) What activities defendant Unions agreed to engage in and have engaged in so as to prevent the sale and shipment of millwork and patterned lumber into the San Francisco Bay Area by manufacturers located outside the State of California, as [36] alleged in paragraph 27, sub-paragraph (a), page 19, part VI;

(q) How and in what manner the agreement referred to in paragraph 27, sub-paragraph (b), page 19, part VI affects interstate commerce or manufacturers outside of the State of California, other than incidentally with all other commerce and manufacturers;

(r) What subsequent agreements and understandings have been made, the dates thereof, and whether oral or in writing, as referred to in paragraph 28, sub-paragraph (c), page 19, part VI;

(s) How information about shipments from states other than California would have any bearing on enforcement of the provisions of any contract, as alleged in paragraph 28, sub-paragraph (f), page 20, part VI;

(t) How and in what manner defendants prevented the sale and delivery of a car load of millwork and patterned lumber, as alleged in paragraph 28, sub-paragraph (h), page 20, part VI, and whether such prevention, if any, was for a lawful purpose;

(u) How and in what manner these defendants, or any of them, prevented the sale and delivery of car loads of millwork and patterned lumber in the San Francisco Bay Area which had been shipped in interstate commerce; what car loads were so prevented from being sold and shipped, the dates of such shipments, and the names of the shippers, as referred to in paragraph 28, sub-paragraph (h), page 21, part VI;

(v) Whether the use of pickets and threats to

picket, as referred to in paragraph 28, sub-paragraph 1, page 21, part VI, was for a lawful purpose;

(w) What other purchasers of millwork and patterned lumber have been forced to cancel orders from manufacturers outside of the State of California, as alleged in paragraph 28, [37] sub-paragraph (i), page 21, part VI;

(x) The occasions, including the times and places, that railroad freight cars bearing millwork and patterned lumber in transit from other states to the San Francisco Bay Area, were prevented from being unloaded by means of pickets and threats to picket, as alleged in paragraph 28, sub-paragraph (j), page 21, part VI; and whether such picketing or threats to picket was for a lawful purpose and a legitimate object of labor;

(y) How and in what manner the raising, maintaining and stabilizing of the price of millwork and patterned lumber in the San Francisco Bay Area unreasonably affects interstate commerce;

(z) What agreement is referred to in paragraph 28, page 22, part VI;

aa) How it appears, other than by the conclusion of the pleader, that any act done by these defendants, or any of them, related to other than a legitimate objective of labor;

(bb) What manufacturers were conspired against from engaging in interstate commerce;

(cc) Now and in what manner these defendants, or any of them, were engaged or interested in the

maintenance of arbitrary, artificial or non-competitive prices;

(dd) Whether intrastate shipments were likewise affected and the volume of interstate shipments in any way decreased by any of the acts or things referred to in paragraph 30, page 23, part VII.

XIV.

That the said second count contained in said indictment is indefinite, uncertain, ambiguous and unintelligible, and in this behalf these defendants and each of them specify

(a) That said second count is indefinite, uncertain, ambiguous and unintelligible in the same particulars as the first [38] count as to all matters therein incorporated by reference to paragraphs 1 to 25, 28 and 29, of the first count, and these defendants refer to the specifications of the demurrer as to said paragraphs of the first count, and incorporate them herein to the same extent and effect as though repeated at length;

(b) That it does not appear how these defendants could monopolize the business of selling and distributing millwork and patterned lumber when not engaged in such business;

(c) That it does not appear how these defendants could prevent, eliminate and suppress all competition in the manufacture and sale of millwork and patterned lumber from manufacturers and dealers outside of the San Francisco Bay Area and the State of California, when their alleged

agreement only affected manufacturers not maintaining certain standards of wages and labor conditions;

(d) That it does not appear what contracts were made, as alleged in paragraph 35, sub-paragraph (a), page 25, part IX;

(e) That it does not appear from whom defendant Unions have from time to time demanded that purchases be made only from manufacturers acceptable to said Unions;

(f) That it does not appear what agreements and demands were enforced by picketing or threatened picketing, and what other means of intimidation or coercion were used, as set forth in paragraph 35, sub-paragraph (c), page 25, part IX.

Wherefore, these demurring defendants separately pray that this demurrer to said indictment, and each count separately, be sustained and that said indictment as to each of them be dismissed and that each defendant be forthwith discharged.

JOSEPH O. CARSON, JR.

HUGH K. McKEVITT

JACK M. HOWARD

Attorneys for said Defendants.

[Endorsed]: Filed Oct. 1, 1940. [39]

[Title of District Court and Cause.]

DEMURRER OF THE DEFENDANTS LUMBER PRODUCTS ASSOCIATION, INC., AND OTHER DEFENDANTS TO THE INDICTMENT.

Defendants, Lumber Products Association, Inc., a corporation, and the defendants Acme Manufacturing Co., Inc., a corporation, J. A. Hart Mill & Lumber Co., Warden Brothers, a partnership, Brannan Street Planing Mill, a partnership, Sage & Wilder, a partnership, Liberty Mill & Cabinet Shop, a partnership, Eureka [40] Sash, Door & Molding Mills, a corporation, W. P. Holmes Mill & Cabinet Shop, Carl Warden, Harry W. Gaetjen, Charles Monson and Fred Spencer, severally, but not jointly, demur to the indictment and to each of the counts therein on the following grounds:

I.

The indictment does not state facts sufficient to constitute any offense by defendants J. A. Hartants, or by any of them, against the United States.

II.

The indictment does not state facts sufficient to constitute any offense by defendants J. A. Hart Mill & Lumber Co., Warden Brothers, a partnership, Brannan Street Planing Mill, a partnership, Sage & Wilder, a partnership, Liberty Mill & Cabinet Shop, a partnership, and W. P. Holmes Mill & Cabinet Shop, or any of them against the United States.

III.

Count One of the indictment does not state facts sufficient to constitute any offense by these demurring defendants, or by any of them, against the United States.

IV.

Count One of the indictment does not state facts sufficient to constitute any offense by defendants Warden Brothers, a partnership, Brannan Street Planing Mill, a partnership, Sage & Wilder, a partnership, and Liberty Mill & Cabinet Shop, a partnership.

V.

Count One of the indictment does not state facts sufficient to constitute any offense by these demurring defendants, or by any of them, under Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Antitrust Act. [41]

VI.

Count One of the indictment does not state facts sufficient to constitute any offense by the defendants, Warden Brothers, a partnership, Brannan Street Planing Mill, a partnership, Sage & Wilder, a partnership, and Liberty Mill & Cabinet Shop, a partnership, or by any of them, under Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Antitrust Act.

VII.

Count Two of the indictment does not state facts sufficient to constitute any offense by these de-

murring defendants, or by any of them, under Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Antitrust Act.

VIII.

Count Two of the indictment does not state facts sufficient to constitute any offense by the defendants Warden Brothers, a partnership, Brannan Street Planing Mill, a partnership, Sage & Wilder, a partnership, and Liberty Mill & Cabinet Shop, a partnership, or by any of them, under Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Antitrust Act.

IX.

Count One of the indictment is duplicitous in that it charges or purports to charge more than one separate and distinct offense against the United States, namely:

(a) A combination and conspiracy to exclude manufacturers of millwork and patterned lumber located in states other than California from selling millwork and patterned lumber in the San Francisco Bay area and from shipping such millwork and patterned lumber in interstate trade and commerce [42] into the San Francisco Bay area.

(b) A combination and conspiracy to curtail, restrict and prevent lumber yards and jobbers in the San Francisco Bay area from purchasing and shipping or causing to be shipped in interstate commerce in the San Francisco Bay area millwork and patterned lumber manufactured in states other than California.

(c) A combination and conspiracy to raise, fix, stabilize and maintain prices for millwork and patterned lumber shipped in interstate commerce into the State of California for sale in the San Francisco Bay area.

X.

Count One of the indictment is defective for repugnancy in that it charges or purports to charge in one and the same count that the defendants combined and conspired to exclude from the San Francisco Bay area and from sale therein millwork and patterned lumber manufactured in states outside of the State of California and also that they combined and conspired to raise, fix, maintain and stabilize prices in the San Francisco Bay area of millwork and patterned lumber, manufactured in states outside of California, these charges being inconsistent and repugnant since the second supposes and requires the continued importation of out-of-state millwork and lumber, and, not its exclusion.

XI.

Count Two of the indictment is duplicitous in that it charges or purports to charge more than one separate and distinct offense against the United States, namely:

(a) A combination and conspiracy to monopolize part of the interstate trade and commerce among the several states [43] in the sale of millwork and patterned lumber in the San Francisco Bay area.

(b) A combination and conspiracy to attempt to monopolize part of the interstate trade and commerce among the several states in the sale of millwork and patterned lumber in the San Francisco Bay area.

(c) An attempt to monopolize part of the trade and commerce among the several states in the sale of millwork and patterned lumber in the San Francisco Bay area.

(d) A combination and conspiracy in restraint of trade and commerce in millwork and patterned lumber among the several states of the United States.

(e) A combination and conspiracy to exclude manufacturers of millwork and patterned lumber located in states other than California from selling millwork and patterned lumber in the San Francisco Bay area and from shipping such millwork and patterned lumber in interstate trade and commerce into the San Francisco Bay area.

(f) A combination and conspiracy to curtail, restrict and prevent lumber yards and jobbers in the San Francisco Bay area from purchasing and shipping or causing to be shipped in interstate commerce in the San Francisco Bay area millwork and patterned lumber manufactured in states other than California.

(g) A combination and conspiracy to raise, fix, stabilize and maintain prices for millwork and patterned lumber shipped in interstate commerce into the State of California for sale in the San Francisco Bay area.

(h) A combination and conspiracy to monopolize the business of selling and distributing millwork and patterned lumber shipped in interstate commerce into the San Francisco [44] Bay area.

(i) A combination and conspiracy to prevent, eliminate and suppress all competition in the manufacture and sale of millwork and patterned lumber from manufacturers and dealers outside of the San Francisco Bay area.

(j) A combination and conspiracy to establish and maintain uniform, monopolistic and non-competitive prices for the sale of millwork and patterned lumber shipped in interstate trade into the San Francisco Bay area.

(k) A combination and conspiracy to eliminate and prevent all millwork and patterned lumber manufacturers and dealers other than those having their principal place of business and mill in the San Francisco Bay area from engaging in the sale and distribution of millwork and patterned lumber in said area.

XII.

Count Two of the indictment is defective for repugnancy in that it charges or purports to charge in one and the same count, on the one hand, that the defendants combined and conspired with the object of monopolizing the business of selling millwork and patterned lumber in the Bay area shipped in interstate commerce and of establishing and maintaining uniform, monopolistic and non-competitive prices for the sale of millwork and patterned

lumber shipped in interstate commerce into the San Francisco Bay area, which said objects presuppose and require the continuance of the importation in interstate commerce of millwork and patterned lumber into the San Francisco Bay area; while, on the other hand, it also charges that the defendants combined and conspired with the object of excluding from the San Francisco Bay area all millwork and patterned lumber produced [45] outside of the State of California, which said object presupposes and requires the termination of interstate commerce in the San Francisco Bay area of millwork and patterned lumber produced outside of the State of California.

XIII.

Count One of the indictment is vague, indefinite and uncertain to such an extent that these defendants are not advised of the nature of the charges against them so that they, or any of them, may properly prepare and submit defenses thereto, and no facts are stated sufficient to notify these defendants, or any of them, of the nature of the accusations for which they and each of them are now sought to be placed on trial, as required by the Sixth Amendment to the Constitution of the United States.

XIV.

Count One of the indictment is vague, indefinite and uncertain as aforesaid in this, that it is not stated therein nor can it be ascertained therefrom:

1. How the defendant Lumber Products Asso-

ciation, Inc., not having been incorporated until November, 1938, as alleged in paragraph 7 of the indictment, could have

(a) Entered into or been a party to any agreement with the defendant unions or other defendants in the year 1936, as alleged in paragraph 28, subdivision (a) of the indictment;

(b) Pursuant to any understanding set out in said paragraph 28, subdivision (a) of the indictment, entered into a contract and agreement on September 21, 1936, as alleged in said paragraph 28, subdivision (b) of the indictment; or

(c) Have continued in full force and effect by subsequent [46] agreements and understandings an agreement to which it was not a party, as alleged in paragraph 28, subdivision (c) of the indictment; or

(d) In June, 1937, prevented the sale and delivery of a carload of millwork and patterned lumber in the San Francisco Bay area which had been shipped in interstate commerce from the Ewauna Box Company, as alleged in paragraph 28, subdivision (h) of the indictment; or

(e) In June, 1938, forced the Jones Hardwood Company of San Francisco to cancel a certain order for millwork and patterned lumber as alleged in paragraph 28, subdivision (i) of the indictment; or

(f) In January, 1938, prevented the unloading of railroad freight cars bearing millwork and patterned lumber in interstate commerce from states

other than California to the San Francisco Bay area, as alleged in paragraph 28, subdivision (j) of the indictment.

2. How, or in what manner, the defendants in June, 1937, prevented the sale and delivery of a carload of millwork and patterned lumber in the San Francisco Bay area which had been shipped in interstate commerce from the Ewauna Box Company of Klamath Falls, Oregon, to Chris M. Winniger for sale in the San Francisco Bay area, or on other dates prevented the sale and delivery of carloads of millwork and patterned lumber in the San Francisco Bay area which had been shipped in interstate commerce from states other than California for sale in the San Francisco Bay area, all as alleged in paragraph 28, subdivision (h) of the indictment.

3. How, or in what manner, the defendants have, at various dates to the Grand Jurors unknown, forced other pur- [47] chasers of millwork and patterned lumber to cancel orders for millwork and patterned lumber from manufacturers located in states other than California, all as alleged in paragraph 28, subdivision (i) of the indictment.

XV.

Count Two of the indictment is vague, indefinite and uncertain to such an extent that these defendants are not advised of the nature of the charges against them so that they, or any of them, may properly prepare and submit defenses thereto, and no facts are stated sufficient to notify these defend-

ants, or any of them, of the nature of the accusations for which they and each of them are now sought to be placed on trial, as required by the Sixth Amendment to the Constitution of the United States.

XVI.

Count Two of the indictment is vague, indefinite and uncertain, as aforesaid, in this, that it is not stated therein nor can it be ascertained therefrom:

1. Whether the defendants had or have any power to monopolize the trade and commerce among the several states in the sale of millwork and patterned lumber in the San Francisco Bay area in the State of California.

2. Whether the defendants had or have any intent to monopolize the trade and commerce among the several states in the sale of millwork and patterned lumber in the San Francisco Bay area in the State of California.

3. Whether all or any substantial proportion of the mills, sawmills, or cabinet shops in states other than California manufacturing millwork and patterned lumber fail or failed to conform to the rates of wages and working conditions [48] of the collective bargaining agreements between the defendant unions and the defendant manufacturers.

4. Whether the defendants knew, supposed or believed that all or any substantial proportion of the mills, sawmills, and cabinet shops in states other than California manufacturing millwork and patterned lumber fail or failed to conform to the

rates of wages and working conditions of the collective bargaining agreements between the defendant unions and the defendant manufacturers.

Wherefore, these defendants severally pray that this demurrer be sustained and the indictment be dismissed and that these defendants and each of them be hence dismissed by the Court.

J. M. THOMAS

**BROBECK, PHLEGER &
HARRISON**

Attorneys for defendants

Lumber Products Association,
Inc., et al.

[Endorsed]: Filed Oct. 1, 1940. [49]

[Title of District Court and Cause.]

**PLEA IN ABATEMENT BY DEFENDANT
DAVE RYAN**

Comes now the defendant Dave Ryan, and in addition to the plea in abatement filed herein as a member of The Bay Counties District Council of Carpenters of The United Brotherhood of Carpenters and Joiners of America, files this further, separate individual plea, and without waiving his right hereafter to plead not guilty, says that the United States ought not further to prosecute the said indictment against him and is barred therefrom for the following reasons, to wit:

That the evidence upon which this indictment was found by the Grand Jury was obtained in direct violation and contravention of the Constitutional right of this defendant under Amendment 5 of the United States Constitution, not to be compelled to be a [50] witness against himself in a criminal action or proceeding and further that by reason of being compelled to testify concerning the transactions, matters and things upon which the indictment was found, he is entitled to immunity from prosecution on the charges contained in said indictment, which prosecution is barred under the provisions of Section 32, 15 U.S.C.A.

Specifically, this defendant alleges that on the 11th day of April, 1940, a subpoena duces tecum was issued out of the above entitled Court directed to said The Bay Counties District Council of Carpenters of The United Brotherhood of Carpenters and Joiners of America, and to this defendant as secretary thereof, and said subpoena was served upon your affiant as secretary of said local Union; that pursuant to said subpoena your affiant appeared on April 24, 1940, before the Grand Jury which found and presented said indictment; that then and there this defendant refused to testify pursuant to said subpoena unless granted immunity, which was refused him, and this defendant asserted his existing constitutional guarantees and rights under Amendments IV and V of the Constitution of the United States, including the right of a person not to be compelled to be a witness against himself in a criminal proceeding and

against self-incrimination, which rights and guarantees were asserted, both as an individual and as a member of the said The Bay Counties District Council of Carpenters of The United Brotherhood of Carpenters and Joiners of America; that notwithstanding the refusal of this defendant to testify for the reasons aforesaid, the above entitled Court, of which the aforesaid grand jury was a part, ordered, required and compelled this defendant to comply with said subpoena and give testimony pursuant thereto, and concerning the transactions, matters and things upon which said indictment was found; that under such compulsion and not otherwise, and over the continued protest of this defendant, he was required to and did give testi- [51] mony and evidence concerning the transactions, matters and things upon which the said indictment was found, and among others, the following:

That he was interrogated and testified before said grand jury concerning the organization of the United Brotherhood of Carpenters and Joiners of America and all local unions chartered under said Brotherhood, how such organizations were established, set up and functioned; that he was further interrogated and testified concerning the identity of the officers of the Bay Counties District Council of Carpenters of The United Brotherhood of Carpenters and Joiners of America; that he was further interrogated and testified concerning his signature appended to the agreement of September, 1936, and described in the indictment herein; that he was further interrogated

and testified concerning the existence of communications relating to the matters and things specified in said subpoena duces tecum;

That the evidence required to be given by this defendant went beyond the scope of producing and identifying books, records and documents, and related both directly and indirectly to transactions, matters and things contained in said indictment; that this indictment has been found against him illegally; that he is immune from prosecution upon the charges contained in said indictment and that as to this defendant said indictment is barred and is null and void and should be abated.

Wherefore, this defendant prays judgment whether he shall be called further to answer said indictment and prays that said indictment be quashed or that he be dismissed therefrom.

DAVE RYAN [52]

(Duly Verified.)

[Endorsed]: Filed Oct. 1, 1940. [53]

[Title of District Court and Cause.]

PLEA IN ABATEMENT BY DEFENDANT
CHARLES HELBING

Comes now the defendant Charles Helbing and in addition to the plea in abatement filed herein as a member of the United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42,

files this further, separate individual plea, and without waiving his right hereafter to plead not guilty, says that the United States ought not further to prosecute the said indictment against him and is barred therefrom for the following reasons, to wit:

That the evidence upon which this indictment was found by the Grand Jury was obtained in direct violation and contravention of the Constitutional right of this defendant under Amendment 5 of the United States Constitution not to be compelled to be a [54] witness against himself in a criminal action or proceeding and further that by reason of being compelled to testify concerning the transactions, matters and things upon which the indictment was found, he is entitled to immunity from prosecution on the charges contained in said indictment, which prosecution is barred under the provisions of Section 32, 15 U.S.C.A.

Specifically, this defendant alleges that on the 11th day of April, 1940, a subpoena duces tecum was issued out of the above entitled Court directed to said United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42, and said subpoena was served upon your affiant as business agent of said local Union; that pursuant to said subpoena your affiant appeared on May 13, 1940, before the Grand Jury which found and presented said indictment; that then and there this defendant refused to testify pursuant to said subpoena unless granted immunity, which was refused him, and this defendant asserted his existing constitutional guarantees and

rights under Amendments IV and V of the Constitution of the United States, including the right of a person not to be compelled to be a witness against himself in a criminal proceeding and against self-incrimination, which rights and guarantees were asserted, both as an individual and as a member of said United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42; that notwithstanding the refusal of this defendant to testify for the reasons aforesaid, the above entitled Court of which the aforesaid grand jury was a part, ordered, required and compelled this defendant to comply with said subpoena and give testimony pursuant thereto, and concerning the transactions, matters and things upon which said indictment was found; that under such compulsion and not otherwise, and over the continued protest of this defendant, he was required to and did give testimony and evidence concerning the transactions, matters and things upon which the said indictment was found, and among [55] others, the following:

That he was interrogated and testified before said grand jury relative to certain statements attributed to him in the minutes of a meeting during the year 1938, of said United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42, and was questioned and testified concerning the meaning of such statements and the use of the word "pledge" in connection with the agreement or agreements between such union and the defendant manufacturers in the above entitled proceeding and referred to in said indictment;

That this defendant was further interrogated and gave testimony concerning the taking of certain so-called "booster cards" to Jones Brothers, which cards fostered the use of local millwork as opposed to millwork manufactured outside of the San Francisco Bay area;

That this defendant was further interrogated and testified concerning his acts and conduct in connection with blocking the use of material in the San Francisco Bay area that did not carry a union label, and he was further required to give evidence concerning the union organization of millwork manufacturers in the states of Washington and Oregon;

That the evidence required to be given by this defendant went beyond the scope of producing and identifying books, records and documents, and related both directly and indirectly to transactions, matters and things contained in said indictment; that this indictment has been found against him illegally; that he is immune from prosecution upon the charges contained in said indictment and that as to this defendant said indictment is barred and is null and void and should be abated.

Wherefore, this defendant prays judgment whether he shall be called further to answer said indictment and prays that said [56] indictment be quashed or that he be dismissed therefrom.

CHARLES HELBING [57]

(Duly Verified.)

[Endorsed]: Filed Oct. 1, 1940. [58]

[Title of District Court and Cause.]

**PLEA IN ABATEMENT BY DEFENDANT
WALTER O'LEARY**

Comes now the defendant Walter O'Leary, and in addition to the plea in abatement filed herein as a member of the United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550, files this further, separate individual plea, and without waiving his right hereafter to plead not guilty, says that the United States ought not further to prosecute the said indictment against him and is barred therefrom for the following reasons, to wit:

That the evidence upon which this indictment was found by the Grand Jury was obtained in direct violation and contravention of the Constitutional right of this defendant under Amendment 5 of the United States Constitution not to be compelled to be a [59] witness against himself in a criminal action or proceeding and further that by reason of being compelled to testify concerning the transactions, matters and things upon which the indictment was found, he is entitled to immunity from prosecution on the charges contained in said indictment, which prosecution is barred under the provisions of Section 32, 15 U.S.C.A.

Specifically, this defendant alleges that on the 11th day of April, 1940, a subpoena duces tecum was issued out of the above entitled Court directed to said United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550, and said subpoena was served upon your affiant as business agent

of said local Union; that pursuant to said subpoena your affiant appeared on May 13, 1940, before the Grand Jury which found and presented said indictment; that then and there this defendant refused to testify pursuant to said subpoena unless granted immunity, which was refused him, and this defendant asserted his existing constitutional guarantees and rights under Amendments IV and V of the Constitution of the United States, including the right of a person not to be compelled to be a witness against himself in a criminal proceeding and against self-incrimination, which rights and guarantees were asserted, both as an individual and as a member of the said United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550; that notwithstanding the refusal of this defendant to testify for the reasons aforesaid, the above entitled Court, of which the aforesaid grand jury was a part, ordered, required and compelled this defendant to comply with said subpoena and give testimony pursuant thereto, and concerning the transactions, matters and things upon which said indictment was found; that under such compulsion and not otherwise, and over the continued protest of this defendant, he was required to and did give testimony and evidence concerning the transactions, matters and things upon which the said indictment was found, and among [60] others, the following:

That he was interrogated and testified before said grand jury concerning the sending back to Los Angeles of certain ironing boards shipped from Los Angeles to the San Francisco Bay area and relative to

the reasons for the return of said ironing boards; that this defendant was further interrogated and gave testimony concerning activities in the San Francisco Bay area in keeping out millwork manufactured under a lesser wage scale than that existing in the San Francisco Bay area; that this defendant was further interrogated and testified concerning the refusal to use or install products not bearing the union label and he was further interrogated and testified concerning his present attitude as to the propriety of keeping out of the San Francisco Bay area products without the union label or manufactured under a lesser wage scale than that prevailing in the San Francisco Bay area;

That the evidence required to be given by this defendant went beyond the scope of producing and identifying books, records and documents, and related both directly and indirectly to transactions, matters and things contained in said indictment; that this indictment has been found against him illegally; that he is immune from prosecution upon the charges contained in said indictment and that as to this defendant said indictment is barred and is null and void and should be abated.

Wherefore, this defendant prays judgment whether he shall be called further to answer said indictment and prays that said indictment be quashed or that he be dismissed therefrom.

WALTER O'LEARY. [61]

(Duly Verified.)

[Endorsed]: Filed Oct. 1, 1940. [62].

[Title of District Court and Cause.]

PLEA IN ABATEMENT BY CERTAIN
DEFENDANTS.

Come now the defendants The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 42, The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 550, and the individual defendants Dave Ryan, Charles Roe, Charles Helbing, D. J. Edwards, W. P. Kelly, H. Lidley, W. L. Wilcox, Walter O'Leary, M. D. Cicinato, J. P. Sholden, C. H. Irish, Otto W. Sammet and Emil H. Ovenberg, and without waiving their rights, or the right of any of them hereafter to plead not guilty, separately and severally, say that the United States ought not further to prosecute the indictment herein against them, for the following [63] reasons, to wit:

I.

The evidence upon which this indictment was found by the Grand Jury against these certain defendants was obtained by an unlawful search and seizure of their persons, property and effects, in direct violation and contravention of Amendment IV of the United States Constitution.

Specifically, subpoenas duces tecum, returnable before the Grand Jury, were issued out of and under the Seal of this Court directed to Millmen's Union No. 550 and Millmen's Union No. 42, both of the

United Brotherhood of Carpenters and Joiners of America, and to Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, calling, among other things, for the production before the Grand Jury of the records and documents of the said organizations. Inasmuch as the said organizations were and are unincorporated voluntary associations of individuals for trade union purposes, their respective records and documents were and are private papers, property and effects of the said trade unions and of the various individual members thereof, including the individual defendants presenting this plea, each of whom is, and at all times herein mentioned was, a member of at least one of the unincorporated voluntary associations presenting this plea. On the return of the aforesaid subpoenas duces tecum, the said Millmen's Union No. 550 and Millmen's Union No. 42 and Bay Counties District Council of Carpenters, on behalf of themselves and all their members respectively, including the individual defendants presenting this plea, protested, claimed and asserted that the compulsory production of said records and documents was a violation of their constitutional rights under Amendment IV of the United States Constitution and that the said records and documents were the private papers, property and effects of the [64] said three trade unions and of the members thereof including the individual defendants presenting this plea; and the said three trade unions on behalf of themselves and all their

members, including the individual defendants presenting this plea, thereupon declined, because of such claimed violation of their constitutional rights, to produce said records and documents before the Grand Jury unless they were given immunity in accordance with the statute in such case made and provided. Extension of such immunity was refused; and the Court of which the aforesaid Grand Jury was a part thereupon ordered, required and compelled compliance with the said subpoenas duces tecum; and thereupon, over protest by the said three trade unions on behalf of themselves and their respective members, including the individual defendants presenting this plea, yielded up said records and documents to the Grand Jury which seized and took possession thereof and used the same as evidence against the defendants presenting this plea and against the said three trade unions and considered and employed said records and documents in support of the aforesaid indictment and in and for the finding thereof. No search warrant was ever issued calling for the production or seizure of the said records and documents; and the same were seized and taken from the possession of the said three trade unions and these certain defendants presenting this plea and used as aforesaid, without their consent and in violation of their protests and rights.

In consequence, the defendants presenting this plea respectfully submit that this indictment has been found against them and each of them illegally.

and that the same is null and void and should be abated.

II.

The evidence upon which this indictment was found by the Grand Jury was obtained in direct violation and contravention [65] of the constitutional right of these defendants under Amendment V of the United States Constitution not to be compelled to be witnesses against themselves in a criminal action or proceeding.

Specifically, subpoenas duces tecum, returnable before the Grand Jury, were issued out of and under the Seal of this Court directed to Millmen's Union No. 550 and Millmen's Union No. 42, both of the United Brotherhood of Carpenters and Joiners of America, and to Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, calling, among other things for the production before the Grand Jury of the records and documents of the said organizations. Inasmuch as the said organizations were and are unincorporated voluntary associations of individuals for trade union purposes, their respective records and documents were and are private papers, property and effects of the said trade unions and of the various individual members thereof, including the individual defendants presenting this plea, each of whom is, and at all times herein mentioned was, a member of at least one of the unincorporated voluntary associations presenting this plea. On the return of the aforesaid subpoenas duces tecum, the said Millmen's Union No. 550 and

Millmen's Union No. 42 and Bay Counties District Council of Carpenters, on behalf of themselves and all their members respectively, including the individual defendants presenting this plea, protested, claimed and asserted that the compulsory production of said records and documents was a violation of their constitutional rights under Amendment V of the United States Constitution and an unlawful means of compelling them to give evidence against themselves, and that the said records and documents were the private papers, property and effects of the said three trade unions and of the members thereof including the individual defendants presenting this plea; and the said three trade unions on behalf of themselves and all their members, [66] including the individual defendants presenting this plea, thereupon declined, because of such claimed violation of their constitutional rights, to produce said records and documents before the Grand Jury unless they were given immunity in accordance with the statute in such case made and provided. Extension of such immunity was refused; and the Court, of which the aforesaid Grand Jury was a part, thereupon ordered, required and compelled compliance with the said subpoenas duces tecum; and thereupon, over protest by the said three trade unions on behalf of themselves and their respective members, including the individual defendants presenting this plea, yielded up said records and documents to the Grand Jury which seized and took possession thereof and used the same as evidence against the defendants presenting this plea and against the said three trade

unions and considered and employed said records and documents in support of the aforesaid indictment and the finding thereof. No search warrant was ever issued calling for the production or seizure of the said records and documents; and the same were seized and taken from the possession of the said three trade unions and these certain defendants presenting this plea without their consent and in violation of their protests and rights.

In consequence, the defendants presenting this plea respectfully submit that they have been compelled illegally to give evidence against themselves; that this indictment has been found against them illegally; and that the same is null and void and should be abated.

Wherefore, these certain defendants pray judgment whether they shall be called further to answer said indictment and pray that the said indictment be quashed.

**THE BAY COUNTIES DISTRICT
COUNCIL OF [67] CARPEN-
TERS OF THE UNITED
BROTHERHOOD OF CARPEN-
TERS AND JOINERS OF AMER-
ICA**

By DAVE RYAN

Secretary.

**THE UNITED BROTHERHOOD
OF CARPENTERS AND JOIN-
ERS OF AMERICA MILLMEN'S
UNION No. 42**

By D. J. EDWARDS

Vice-President.

**THE UNITED BROTHERHOOD
OF CARPENTERS AND JOIN-
ERS OF AMERICA MILLMEN'S
UNION No. 550**

By WALTER O'LEARY

Business Representative.

DAVE RYAN

WALTER O'LEARY

CHARLES ROE

D. J. EDWARDS.

CHARLES HELBING

W. P. KELLY

W. L. WILCOX

H. LIDLEY

M. D. CICINATO

J. P. SHOLDEN

C. H. IRISH

EMIL H. OVENBERG

OTTO W. SAMMET [68]

(Duly Verified.) [69]

[Endorsed]: Filed Oct. 1, 1940. [81]

**District Court of the United States
Northern District of California
Southern Division**

**At a Stated Term of the Southern Division of the
United States District Court for the Northern Dis-
trict of California, held at the Court Room thereof,**

in the City and County of San Francisco, on Tuesday, the 1st day of October, in the year of our Lord one thousand nine hundred and forty.

Present: The Honorable A. F. St. Sure, District Judge.

No. 26977.

[Title of Cause.]

This case came on regularly this day for entry of plea of defendants * * * ; also for entry of plea of defendant Lumber Products Association, et al.

Morris Clark, Esq., Special Assistant to the Attorney General, was present for and on behalf of the United States. Harold C. Faulkner, Esq., Charles de Y. Elkus, Jr., Esq., Maurice R. Carey, Esq., Mathew O. Tobriner, Esq., Hugh K. McKevitt, Esq., Jack M. Howard, Esq., J. M. Thomas, Esq., Maurice E. Harrison, Esq., Morgan J. Doyle, Esq., and James O'Brien, Esq., appeared as Attorney for the various defendants. [82]

* * * * *

Mr. Carey filed the Demurrer of the defendants Smith Lumber Co. and Reginald Smith. * * * Mr. Harrison filed a motion to quash Indictment as to the defendants Warden Brothers, * * *, * * *, and the Demurrer of the defendants Lumber Products Association, Acme Manufacturing Co., J. A. Hart Mill & Lumber Co., Warden Brothers, * * *, * * *, Eureka Sash, Door & Moulding Mills, W. P. Holmes Mill & Cabinet Shop, Carl Warden, Harry W. Gaetjen, Charles Monson and Fred Spencer.

* * * * *

Mr. McKevitt filed a Demurrer and a Demand for a Bill of Particulars on behalf of the defendants The United Brotherhood of Carpenters and Joiners of America, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 42; The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 550, * * *, The Alameda County Building and Construction Trades Council, J. F. Cambiano, Dave Ryan, * * *, Charles Roe, Charles Helbing, D. J. Edwards, W. P. Kelly, * * *, W. L. Wilcox, Walter O'Leary, * * *, * * *, C. H. Irish, * * *, * * *, Emil H. Ovenberg.

* * * * *

Mr. McKevitt filed pleas in abatement on behalf of the defendants Dave Ryan, Walter O'Leary, Charles Helbing, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 42, [83] The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 550, and Dave Ryan, Charles Roe, Charles Helbing, D. J. Edwards, W. P. Kelly, * * *, W. L. Wilcox, Walter O'Leary, * * *, * * *, C. H. Irish, * * *, and Emil H. Ovenberg. After hearing Mr. Clark and the Attorneys for the various defendants, It Is Ordered that the Clerk of this Court file the various pleas in abatement and that

they then be placed on the Secret File of this Court.

The following defendants who were present with their Attorney Morgan J. Doyle, Esq., thereupon plead "Not Guilty" to the charges contained in the Indictment, to-wit: Robert W. Shannon, Nels E. Nelson, Boorman Lumber Co., by George Clayberg, Manager, Eureka Mill & Lumber Co., by Clarence I. Gilbert, Hayward Mill & Lumber Co., by Nels C. Nelson, Owner, * * *, Hogan Lumber Co., by Thomas P. Hogan, Jr., President, E. K. Wood Lumber Company, by John B. Wood, President, Wood Products, Inc., by David N. Edward, Director, Zenith Mill & Lumber Company, by Roy N. Driesbach, Vice-President, Loop Lumber & Mill Company, by William Chatman, President, San Leandro Mill & Lumber Co., by R. W. Shannon, Owner, San Pablo Lumber Co., by A. C. Nelson, Partner, Tilden Lumber Co., by Victor J. Herrman, President.

After hearing the various Attorneys, it is ordered that the hearing on the various Demurrers and Motions be continued to October 21, 1940.

Further ordered that the United States have to October 7, 1940, to file Brief and that the defendants have one week thereafter to file reply Briefs, and that the United States [84] have five days thereafter to file reply Briefs.

Further ordered that the arraignment of the defendants Driesbach, et al, and the plea of the other defendants be continued to October 21, 1940. [85]

[Title of District Court and Cause.]

**DEMURRER TO PLEA IN ABATEMENT OF
DEFENDANT WALTER O'LEARY [86]**

Now comes the United States of America, by Frank J. Hennessy, United States Attorney, Tom C. Clark, Morris R. Clark, Charles C. Pearce, Charles S. Burdell, and Laurence P. Sherfy, Special Assistants to the Attorney General, and demurs to the plea in abatement herein of defendant Walter O'Leary, on the ground that the facts stated therein, or any of them, do not entitle said defendant to immunity under the Act of February 25, 1903, c. 755 § 1, 32 Stat. 904 (c. 15, sec. 32 of the United States Code), or under any other immunity statute of the United States.

Respectfully,

FRANK J. HENNESSY

United States Attorney

TOM C. CLARK

MORRIS R. CLARK

CHARLES C. PEARCE

CHARLES S. BURDELL

LAURENCE P. SHERFY

Special Assistants to the Attorney General,
Attorneys for the United States of America.

CERTIFICATE

I certify that, in my opinion, the within Demurrer is good in law and is not taken for purposes of delay.

MORRIS R. CLARK

Special Assistant to the Attorney General. [87]
[Verification.]

[Endorsed]: Filed Oct. 14, 1940. [88]

[Title of District Court and Cause.]

DEMURRER TO PLEA IN ABATEMENT ENTITLED "PLEA IN ABATEMENT BY CERTAIN DEFENDANTS" [89]

Now comes the United States of America, by Frank J. Hennessy, United States Attorney, Tom C. Clark, Morris R. Clark, Charles C. Pearce, Charles S. Burdell, and Laurence P. Sherfy, Special Assistants to the Attorney General, and demurs to the plea herein entitled "Plea in Abatement by Certain Defendants," on the ground that the facts stated therein, or any of them, do not entitle the defendants named therein, or any of them, to immunity under the Act of February 25, 1903, c. 755, § 1, 32 Stat. 904 (c. 15, sec. 32 of the United States Code), or under any other immunity statute of the United States.

Respectfully,

FRANK J. HENNESSY

United States Attorney

TOM C. CLARK

MORRIS R. CLARK

CHARLES C. PEARCE

CHARLES S. BURDELL

LAURENCE P. SHERFY

Special Assistants to the Attorney General,
Attorneys for the United States of America.

CERTIFICATE

I certify that, in my opinion, the within Demurrer is good in law and is not taken for purposes of delay.

MORRIS R. CLARK

Special Assistant to the Attorney General. [90]

[Verification.]

[Endorsed]: Filed Oct. 14, 1940. [91]

[Title of District Court and Cause.]

DEMURRER TO PLEA IN ABATEMENT OF
DEFENDANT CHARLES HELBING [92]

Now comes the United States of America, by Frank J. Hennessy, United States Attorney, Tom C. Clark, Morris R. Clark, Charles C. Pearce, Charles S. Burdell, and Laurence P. Sherfy, Special Assistants to the Attorney General, and demurs to the plea in abatement herein of defendant Charles Helbing, on the ground that the facts stated therein, or any of them, do not entitle said defendant to immunity under the Act of February 25, 1903, c. 755

§ 1, 32 Stat. 904 (c. 15, sec. 32 of the United States Code), or under any other immunity statute of the United States.

Respectfully,

FRANK J. HENNESSY

United States Attorney

TOM C. CLARK

MORRIS R. CLARK

CHARLES C. PEARCE

CHARLES S. BURDELL

LAURENCE P. SHERFY

Special Assistants to the Attorney General,
Attorneys for the United States of America.

CERTIFICATE

I certify that, in my opinion, the within Demurrer is good in law and is not taken for purposes of delay.

MORRIS R. CLARK

Special Assistant to the Attorney General. [93]

[Verification.]

[Endorsed]: Filed Oct. 14, 1940. [94]

[Title of District Court and Cause.]

**DEMURRER TO PLEA IN ABATEMENT OF
DEFENDANT RYAN [95]**

Now comes the United States of America, by
Frank J. Hennessy, United States Attorney, Tom

C. Clark, Morris R. Clark, Charles C. Pearce, Charles S. Burdell, and Laurence P. Sherfy, Special Assistants to the Attorney General, and demurs to the plea in abatement herein of defendant Dave Ryan, on the ground that the facts stated therein, or any of them, do not entitle said defendant to immunity under the Act of February 25, 1903, c. 755, § 1, 32 Stat. 904 (c. 15, sec. 32 of the United States Code), or under any other immunity statute of the United States.

Respectfully,

FRANK J. HENNESSY

United States Attorney

TOM C. CLARK

MORRIS R. CLARK

CHARLES C. PEARCE

CHARLES S. BURDELL

LAURENCE P. SHERFY

Special Assistants to the Attorney General,
Attorneys for the United States of America.

CERTIFICATE

I certify that, in my opinion, the within Demurrer is good in law and is not taken for purposes of delay.

MORRIS R. CLARK

Special Assistant to the Attorney General. [96]

[Verification.]

[Endorsed]: Filed Oct. 14, 1940. [97]

[Title of District Court and Cause.]

**ORDER SUSTAINING DEMURRERS TO
PLEAS IN ABATEMENT AND DENYING
PLEAS IN ABATEMENT, DENYING DE-
MANDS AND MOTIONS FOR BILLS OF
PARTICULARS AND OVERRULING DE-
MURRERS.**

Ordered:

1. That the motions of Warden Brothers (a partnership described in the indictment as composed of Anna K. Warden and Carl A. Warden, copartners), Brannan Street Planing Mill (a partnership described in the indictment as composed of Albert B. Veyhle and Charles Gustafson, copartners), Sage & Wilder (a partnership described in the indictment as composed of Jesse L. Sage and Christian A. Wilder), and Liberty Mill & Cabinet Shop (a movant described in the motion papers as a partnership) to quash the indictment be and each of them is hereby Denied;

2. That the motions of Anna K. Warden, Albert B. Veyhle, Jesse L. Sage, Christian A. Wilder, and Charles [98] Gustafson, to quash bench warrants, to vacate order for issuance thereof, and to discharge bail, be and each of them is hereby Denied;

3. That the motions of George Randolph, Herman Sichel, Ella Bateman, Jessie Bateman, and Phyliss Dennis, to quash bench warrants, to vacate order for issuance thereof, and to discharge bail, be and each of them is hereby Denied;

4. That the Government's demurrers to pleas in abatement of defendants Charles Helbing, Dave Ryan, John Mullen, Walter O'Leary, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42, the United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550, Charles Roe, D. J. Edwards, W. P. Kelly, H. Lidley, W. L. Wilcox, M. D. Cicinato, J. P. Sholden, C. H. Irish, Otto W. Sammet, and Emil H. Ovenberg, be and each of them is hereby Sustained; and the plea in abatement of each of said defendants is hereby Denied;

5. That the demand and motion for bill of particulars of defendants The United Brotherhood of Carpenters and Joiners of America, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42, The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550, The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 1956, The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 262, The Alameda County [99] Building and Construction Trades Council, J. F. Cambiano, Dave Ryan, James Rickets, Charles Roe, Charles Helbing, D. J. Edwards, W. P. Kelly, H. Lidley, W. L. Wilcox, Walter O'Leary, M. D. Cicinato, J. P. Sholden,

C. H. Irish, George S. Smoot, Otto W. Sammet, and Emil H. Ovenberg, be and the same is hereby Denied;

6. That the demand and motion of defendant The San Francisco Building and Construction Trades Council for a bill of particulars, be and the same is hereby Denied;

7. That the demand and motion for bill of particulars of Commercial Fixture and Store Front Institute, Mullen Manufacturing Company, Ful-Vue Fixture Co., Fink & Schindler Co., Exposition Wood Working Co., L. & E. Emanuel, Inc., William Bateman, Uni-Bilt Fixture Co., H. Schulte & Son, Ostlund & Johnson, Brass & Kuhn Company, J. G. Ennes, Charles F. Stauffacher, Joseph L. Emanuel, Richard Kuhn, and C. J. Wood, be and each of them is hereby Denied;

8. That the demurrers of defendants The United Brotherhood of Carpenters and Joiners of America, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42, The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550, The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 1956, The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 262, The Alameda County Building and Construction Trades Council, J. F. Cambiano, Dave Ryan, James Rickets, Charles

Roe, Charles Helbing, D. J. Edwards, W. P. Kelly, H. Lidbey, [100] W. L. Wilcox, Walter O'Leary, M. D. Cicinato, J. P. Sholden, C. H. Irish, George S. Smoot, Otto W. Sammet, and Emil H. Ovenberg, be and each of them is hereby Overruled;

9. That the demurrer of defendant The San Francisco Building and Construction Trades Council, be and the same is hereby Overruled;

10. That the demurrer of defendants Mangrum, Holbrook & Elkus, a corporation, and Eugene S. Elkus, and S. Kulchar (being the person described in the indictment as S. Kulcher), an individual doing business as S. Kulchar & Co. (described in the indictment as S. Kulcher & Co.), to the indictment be and the same is hereby Overruled;

11. That the demurrers of Commercial Fixture and Store Front Institute, Mullen Manufacturing Company, Ful-Vue Fixture Co., Fink & Schindler Co., Exposition Wood Working Co., L. & E. Emanuel, Inc., William Bateman, Uni-Bilt Fixture Co., H. Schulte & Son, Ostlund & Johnson, Brass & Kuhn Company, J. G. Ennes, Charles F. Stauffacher, Joseph L. Emantel, and Richard Kuhn, be and each of them is hereby Overruled;

12. That the demurrers of defendants Pacific Manufacturing Company and J. L. Pierce, be and each of them is hereby Overruled;

13. That the demurrers of The Lumber Products Association, Inc., a corporation, and Acme Manufacturing Co., Inc., a corporation, J. A. Hart Mill & Lumber Co., Warden Brothers (a partner-

ship described in the indictment as composed of Anna K. Warden and Carl A. Warden, copartners), Brannan Street Planing Mill (a partnership described in the indictment as composed of Albert B. [101] Veyhle and Charles Gustafson, copartners), Sage & Wilder (a partnership described in the indictment as composed of Jesse L. Sage and Christian W. Wilder), Liberty Mill & Cabinet Shop (a demurrant described as a partnership in said demurrer), Eureka Sash, Door & Molding Mills, a corporation, W. P. Holmes Mill & Cabinet Shop, Carl Warden, Harry W. Gaetjen, Charles Monson, and Fred Spencer, be and each of them is hereby Overruled;

14. That the demurrers of defendants C. J. Wood and the Redwood Manufacturers Company, a corporation, be and each of them is hereby Overruled;

15. That the demurrers of defendants Smith Lumber Company, a corporation, and Reginald Smith, be and each of them is hereby Overruled.

In regard to the motions to quash bench warrants and vacate order for issuance thereof made by certain defendants, the court's ruling thereon is predicated upon repeated statements made by the Special Assistant to the Attorney General in open court, that the Government does not intend to prosecute the partnership entities as such, and that it was the Government's original intention to proceed only against the individual members of such partnerships. I regard this attitude of Government

Counsel as in the nature of a nolle prosequi, or an agreement on the part of the Government not to prosecute said partnerships as such, but only the individual members thereof. The indictment sufficiently charges these individual defendants, describing them as members of such partnerships.

Dated: November 22, 1940.

A. F. ST. SURE

United States District Judge

[Endorsed]: Filed Nov. 22, 1940. [102]

[Title of District Court and Cause.]

DEMURRER OF ANNA K. WARDEN, ALBERT B. VEYHLE, JESSE L. SAGE, CHRISTIAN A. WILDER, CHARLES GUSTAFSON AND CARL WARDEN TO THE INDICTMENT

Anna K. Warden, Albert B. Veyhle, Jesse L. Sage, Christian A. Wilder, Charles Gustafson and Carl Warden, severally, but not jointly, demur to the indictment and to each of the counts therein on the following grounds:

I.

The indictment does not state facts sufficient to constitute [103] any offense by these demurrants, or by any of them, against the United States.

II.

Count One of the indictment does not state facts sufficient to constitute any offense by these demurrants, or by any of them, against the United States.

III.

Count One of the indictment does not state facts sufficient to constitute any offense by these demurrants, or by any of them, under Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Antitrust Act.

IV.

Count Two of the indictment does not state facts sufficient to constitute any offense by these demurrants, or by any of them, against the United States.

V.

Count Two of the indictment does not state facts sufficient to constitute any offense by these demurrants, or by any of them, under Section 2 of the Act of Congress of July 2, 1890, known as the Sherman Antitrust Act.

VI.

Count One of the indictment is duplicitous in that it charges or purports to charge more than one separate and distinct offense against the United States, namely:

(a) A combination and conspiracy to exclude manufacturers of millwork and patterned lumber located in states other than California from selling millwork and patterned lumber in the San Fran-

cisco Bay area and from Shipping such millwork and patterned lumber in interstate trade and commerce into the San Francisco Bay area.

(b) A combination and conspiracy to curtail, restrict and prevent lumber yards and jobbers in the San Francisco Bay [104] area from purchasing and shipping or causing to be shipped in interstate commerce in the San Francisco Bay area millwork and patterned lumber manufactured in states other than California.

(c) A combination and conspiracy to raise, fix, stabilize and maintain prices for millwork and patterned lumber shipped in interstate commerce into the State of California for sale in the San Francisco Bay area.

VII.

Count One of the indictment is defective for repugnancy in that it charges or purports to charge in one and the same count that the defendants combined and conspired to exclude from the San Francisco Bay area and from sale therein millwork and patterned lumber manufactured in states outside of the State of California and also that they combined and conspired to raise, fix, maintain and stabilize prices in the San Francisco Bay area of millwork and patterned lumber manufactured in states outside of California, these charges being inconsistent and repugnant since the second supposes and requires the continued importation of out-of-state millwork and lumber, and not its exclusion.

VIII.

Count Two of the indictment is duplicitous in that it charges or purports to charge more than one separate and distinct offense against the United States, namely:

(a) A combination and conspiracy to monopolize part of the interstate trade and commerce among the several states in the sale of millwork and patterned lumber in the San Francisco Bay area.

(b) A combination and conspiracy to attempt to monopolize [105] part of the interstate trade and commerce among the several states in the sale of millwork and patterned lumber in the San Francisco Bay area.

(c) An attempt to monopolize part of the trade and commerce among the several states in the sale of millwork and patterned lumber in the San Francisco Bay area.

(d) A combination and conspiracy in restraint of trade and commerce in millwork and patterned lumber among the several states of the United States.

(e) A combination and conspiracy to exclude manufacturers of millwork and patterned lumber located in states other than California from selling millwork and patterned lumber in the San Francisco Bay area and from shipping such millwork and patterned lumber in interstate trade and commerce into the San Francisco Bay area.

(f) A combination and conspiracy to curtail, restrict and prevent lumber yards and jobbers in

the San Francisco Bay area from purchasing and shipping or causing to be shipped in interstate commerce in the San Francisco Bay area millwork and patterned lumber manufactured in states other than California.

(g) A combination and conspiracy to raise, fix, stabilize and maintain prices for millwork and patterned lumber shipped in interstate commerce into the State of California for sale in the San Francisco Bay area.

(h) A combination and conspiracy to monopolize the business of selling and distributing millwork and patterned lumber shipped in interstate commerce into the San Francisco Bay area.

(i) A combination and conspiracy to prevent, eliminate and suppress all competition in the manufacture and sale of mill-[106] work and patterned lumber from manufacturers and dealers outside of the San Francisco Bay area.

(j) A combination and conspiracy to establish and maintain uniform, monopolistic and non-competitive prices for the sale of millwork and patterned lumber shipped in interstate trade into the San Francisco Bay area.

(k) A combination and conspiracy to eliminate and prevent all millwork and patterned lumber manufacturers and dealers other than those having their principal place of business and mill in the San Francisco Bay area from engaging in the sale and distribution of millwork and patterned lumber in said area.

IX.

Count Two of the indictment is defective for repugnancy in that it charges or purports to charge in one and the same count, on the one hand, that the defendants combined and conspired with the object of monopolizing the business of selling millwork and patterned lumber in the Bay area shipped in interstate commerce and of establishing and maintaining uniform, monopolistic and non-competitive prices for the sale of millwork and patterned lumber shipped in interstate commerce into the San Francisco Bay area, which said objects presuppose and require the continuance of the importation in interstate commerce of millwork and patterned lumber into the San Francisco Bay area; while, on the other hand, it also charges that the defendants combined and conspired with the object of excluding from the San Francisco Bay area all millwork and patterned lumber produced outside of the State of California, which said object presupposes and requires the termination of interstate commerce in the San Francisco Bay area of millwork and patterned lumber [107] produced outside of the State of California.

X.

Count One of the indictment is vague, indefinite and uncertain to such an extent that the demurrants are not advised of the nature of the charges against them, if any, so that they, or any of them, may properly prepare and submit defenses thereto, and no facts are stated sufficient to notify the demur-

rants, or any of them, of the nature of the accusations, if any, for which they and each of them are now sought to be placed on trial, as required by the Sixth Amendment to the Constitution of the United States.

XI.

Count One of the indictment is vague, indefinite and uncertain as aforesaid in this, that it is not stated therein nor can it be ascertained therefrom:

1. How the defendant Lumber Products Association, Inc., not having been incorporated until November, 1938, as alleged in paragraph 7 of the indictment, could have

(a) Entered into or been a party to any agreement with the other defendants in the year 1936, as alleged in paragraph 28, subdivision (a) of the indictment; or

(b) Pursuant to any understanding set out in said paragraph 28, subdivision (a) of the indictment, entered into a contract and agreement on September 21, 1936, as alleged in said paragraph 28, subdivision (b) of the indictment; or

(c) Have continued in full force and effect by subsequent agreements and understandings an agreement to which it was not a party, as alleged in paragraph 28, subdivision (c) of the indictment; or

(d) In June, 1937, prevented the sale and delivery [108] of a carload of millwork and patterned lumber in the San Francisco Bay area which had been shipped in interstate commerce from the Ewauna Box Company, as alleged in paragraph 28, subdivision (h) of the indictment; or

(e) In June, 1938, forced the Jones Hardwood Company of San Francisco to cancel a certain order for millwork and patterned lumber as alleged in paragraph 28, subdivision (i) of the indictment; or

(f) In January, 1938, prevented the unloading of railroad freight cars bearing millwork and patterned lumber in interstate commerce from states other than California to the San Francisco Bay area, as alleged in paragraph 28, subdivision (j) of the indictment.

2. How, or in what manner, the defendants in June, 1937, prevented the sale and delivery of a carload of millwork and patterned lumber in the San Francisco Bay area which had been shipped in interstate commerce from the Ewauna Box Company of Klamath Falls, Oregon, to Chris M. Winniger for sale in the San Francisco Bay area, or on other dates prevented the sale and delivery of carloads of millwork and patterned lumber in the San Francisco Bay area which had been shipped in interstate commerce from states other than California for sale in the San Francisco Bay area, all as alleged in paragraph 28, subdivision (h) of the indictment.

3. How, or in what manner, the defendants have, at various dates to the Grand Jurors unknown, forced other purchasers of millwork and patterned lumber to cancel orders for millwork and patterned lumber from manufacturers located in states other than California, all as alleged in paragraph 28, subdivision (i) of the indictment. [109]

XII.

Count Two of the indictment is vague, indefinite and uncertain to such an extent that demurrants are not advised of the nature of the charges against them, if any, so that they, or any of them, may properly prepare and submit defenses thereto, and no facts are stated sufficient to notify the demurrants, or any of them, of the nature of the accusations, if any, for which they and each of them are now sought to be placed on trial, as required by the Sixth Amendment to the Constitution of the United States.

XIII.

Count Two of the indictment is vague, indefinite and uncertain, as aforesaid, in this, that it is not stated therein nor can it be ascertained therefrom:

1. Whether the defendants had or have any power to monopolize the trade and commerce among the several states in the sale of millwork and patterned lumber in the San Francisco Bay area in the State of California.

2. Whether the defendants had or have any intent to monopolize the trade and commerce among the several states in the sale of millwork and patterned lumber in the San Francisco Bay area in the State of California.

3. Whether all or any substantial proportion of the mills, sawmills, or cabinet shops in states other than California manufacturing millwork and patterned lumber fail or failed to conform to the rates of wages and working conditions of the collective

bargaining agreements between the defendant unions and the defendant manufacturers.

4. Whether the defendants knew, supposed or believed that all or any substantial proportion of the mills, sawmills, [110] and cabinet shops in states other than California manufacturing millwork and patterned lumber fail or failed to conform to the rates of wages and working conditions of the collective bargaining agreements between the defendant unions and the defendant manufacturers.

Wherefore, the demurrants severally pray that this demurrer be sustained and the indictment be dismissed as against them and that these demurrants and each of them be hence dismissed by the Court.

**BROBECK, PHLEGER &
HARRISON**

JAMES M. THOMAS

Attorneys for Anna K. Warden,
Albert B. Veyhle, Jesse L.
Sage, Christian A. Wilder,
Charles Gustafson and Carl
Warden.

(Admission of Service)

[Endorsed]: Filed Nov. 26, 1940. [111]

District Court of the United States
Northern District of California
Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Saturday the 30th day of November, in the year of our Lord one thousand nine hundred and forty.

Present: The Honorable A. F. St. Sure, District Judge.

No. 26977.

[Title of Cause.]

In this case the defendants J. F. Cambiano and * * * were present in Court with their Attorneys Hugh McKevitt, Esq., and Jack M. Howard, Esq. Charles C. Pearce, Esq., Special Assistant to the Attorney General, was present for and on behalf of the United States.

The defendants were called to plead. Mr. Howard waived the reading of the Indictment. Each defendant entered a plea of "Not Guilty" of the charges contained in the Indictment, which said pleas were ordered entered. [112]

District Court of the United States
Northern District of California
Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 2nd day of December, in the year of our Lord one thousand nine hundred and forty.

Present: The Honorable A. F. St. Sure, District Judge.

No. 26977-S.

[Title of Cause.]

This case came on regularly this day for entry of pleas of the defendants. Morris R. Clark, Esq., and Charles C. Pearce, Esq., Special Assistants to the Attorney General, were present for and on behalf of the United States. Harold C. Faulkner, Esq., Hugh K. McKevitt, Esq., Jack M. Howard, Esq., J. M. Thomas, Esq., Melbert B. Adams, Esq., Moses Lasky, Esq., and Rinaldo Sciaroni, Esq., were present as Attorneys for the various defendants.

After hearing the Attorneys for the respective parties, and in accordance with the stipulation of the Attorneys regarding the demurrers and Demands for Bills of Particulars, filed this day, It Is Ordered that each and every Demurrer filed by the defendants be and the same is hereby overruled, that each and every Demand for Bill of Particulars

filed by the defendants be and the same is hereby denied. The [113] defendants were allowed exceptions to the ruling of the Court overruling the Demurrers and Denying the Demand for Bill of Particulars.

The defendants were called to plead and thereupon each of the Attorneys for the defendants waived the reading of the Indictment. Each of the following named defendants entered a plea of "Not Guilty" to the Indictment herein, to-wit: * * *, Charles Gustafson, * * *, Carl A. Warden, * * *, * * *, * * *, Christian A. Wilder, * * *, * * *, * * *, Acme Manufacturing Co., Inc., by Charles Monson, President; The Alameda County Building and Construction Trades Counsel, by Charles Roe; The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, by David H. Ryan, Secretary; * * *, * * *, Eureka Sash Door & Moulding Mill, by Fred Spencer, Vice President; * * *, * * *, J. A. Hart Mill & Lumber Co., by J. A. Hart, Owner; * * *, * * *, The Lumber Products Association, Inc., by Harry W. Gaetjen, Secretary; * * *, * * *, * * *, * * *, * * *, The United Brotherhood of Carpenters and Joiners of America, by Dave Ryan, Secretary; The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42, by Charles Helbing, Secretary; * * *, The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550, by Emil Ovenberg; W. P. Holmes Mill & Cabinet Shop, by William P.

Holmes, Owner; * * *, W. P. Kelly, Charles Monson, Emil H. Ovenberg, * * *, Fred Spencer, W. L. Wilcox, * * *, D. J. Edwards, Harry W. Gaetjen, * * *, Charles Roe, * * *, * * *, Charles Helbing, * * *, Walter O'Leary, Dave Ryan, * * *, Carl Warden, W. P. Holmes, * * *. Court ordered that said pleas be entered.

* * * * *

Upon motion of Mr. Doyle, it is ordered that this case [114] be continued to December 9, 1940, for entry of pleas of certain defendants.

After hearing the Attorneys for the respective parties, it is ordered that the trial of this case be and the same is hereby set for January 21, 1941. [115]

District Court of the United States
Northern District of California
Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Saturday the 1st day of November, in the year of our Lord one thousand nine hundred and forty-one.

Present: The Honorable A. F. St. Sure, District Judge.

No. 26977.

[Title of Cause.]

This case came on this day ex parte. The following appearances were made herein, viz: Attorneys appearing for and on behalf of defendants:

Attorneys**MAURICE HARRISON, Esq., and****J. M. THOMAS, Esq.,****Defendants**

Lumber Products Association,
Aeme Manufacturing Co.,
Eureka Sash, Door & Moulding
Mills,

Christian A. Wilder,

J. A. Hart,

W. P. Holmes,

Harry W. Gaetjen,

Charles Monson,

Fred. Spencer,

* * *

Charles Gustafson. [116]

Attorneys

* * *

MORGAN J. DOYLE, Esq.,**Defendants**

* * *

Boorman Lumber Company,

Hogan Lumber Company,

Loop Lumber & Mill Co.,

Tilden Lumber Co.,

E. K. Wood Lumber Co.,

Zenith Mill & Lumber Co.,
Eureka Mill & Lumber Co.,
Wood Products Co., Inc.,
D. N. Edwards,
Nels Nelson,
Andrew Nelson,
Robert Shannon,
* * *

Charles S. Burdell, Esq., Special Attorney for the United States, was present on behalf of the Government.

Upon motion of Mr. Harrison and with the consent of the Court, It Is Ordered that the defendants represented by Mr. Harrison be and each is hereby allowed to withdraw the former plea of "Not Guilty." and enter a plea of Nolo Contendere. Thereupon Mr. Harrison, on behalf of the following defendants, entered a plea of "Nolo Contendere", which said pleas were ordered entered as to the hereinafter named defendants, to-wit:

Lumber Products Association, Acme Manufacturing Co., Eureka Sash, Door & Moulding Mills, Christian A. Wilder, J. A. Hart, W. P. Holmes, Carl Warden, Harry W. Gaetjen, Charles Monson, Fred Spencer, Charles Gustafson.

* * *

Upon motion of Morgan J. Doyle, Esq., and with consent of the Court, It is ordered that the defendants represented [117] represented by him be and each is hereby allowed to withdraw the former plea

of "Not Guilty" and enter a plea of Nolo Contendere. Thereupon Morgan J. Doyle, Esq., on behalf of the following defendants, entered a plea of "Nolo Contendere"; which said pleas were ordered entered, viz:

Boorman Lumber Company, Hogan Lumber Company, The Loop Lumber & Mill Co., Tilden Lumber Co., E. K. Wood Lumber Co., Zenith Mill & Lumber Co., Wood Products, Inc., D. N. Edwards, Nels Nelson, Andrew Nelson, Robert Shannon, Eureka Mill & Lumber Co., * * *

It is further ordered that the matter of the pronouncing of judgment herein be and the same is hereby continued to November 29, 1941.

[118]

District Court of the United States
Northern District of California
Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Thursday the 6th day of November, in the year of our Lord one thousand nine hundred and forty-one.

Present: The Honorable Harold Louderback, District Judge, sitting for and on behalf of Honorable A. F. St. Sure, District Judge.

No. 26977-S.

[Title of Cause.]

* * *

Morgan J. Doyle, Esq., Attorney for the Smith Lumber Co., moved the Court that the said defendant be allowed to withdraw its former plea of "Not Guilty" and enter a plea of Nolo Contendere. After hearing Mr. Doyle and with the consent of Mr. Burdell, it is ordered that the said motion be granted and that the plea of "Not Guilty" be withdrawn. Thereupon said defendant, through its Attorney Mr. Doyle, entered a plea of Nolo Contendere, which plea the Court accepted. Ordered that the matter of judgment be continued to November 29, 1941. [119]

District Court of the United States
Northern District of California
Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday the 10th day of November, in the year of our Lord one thousand nine hundred and forty-one.

Present: The Honorable A. F. St. Sure, District Judge.

No. 26977.

[Title of Cause.]

This case came on regularly this day for trial. Tom C. Clark, Esq., Charles S. Burdell, Esq., Wal-

lace Howland, Esq., Special Assistants to the Attorney General, were present. A. J. Zirpoli, Esq., Assistant United States Attorney, and Walter M. Lehman, Esq., Special Attorney, were present for and on behalf of the United States.

The following defendants were present with their respective Attorneys, viz:

Defendants	Attorneys
* * *	* [120]

Defendants	Attorneys
Alameda County Building and Construction Trades Council	

CLARENCE E. TODD, Esq.,

* * * * *

The United Brotherhood of Carpenters and Joiners of America,

The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America,

The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42,

* * *

The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550,

* * *
JOSEPH O. CARSON, SR., Esq.,
JOSEPH O. CARSON, II, Esq.,
HUGH K. McKEVITT, Esq.,
JACK HOWARD, Esq.,
THOMAS E. KERWIN, Esq.,
HARRY ROUTZOHN, Esq.,
CHARLES H. TUTTLE, Esq.

J. F. Cambiano, * * *, D. J. Edwards, Charles Helbing, C. H. Irish, W. P. Kelly, * * *, Walter O'Leary, Emil H. Ovenberg, * * *, Charles Roe, Dave Ryan, * * *, W. L. Wilcox.

Upon motion of Hugh K. McKevitt, Esq., It Is Ordered that Joseph O. Carson, Sr., Esq., Joseph O. Carson, II, Esq., Charles H. Tuttle, Esq., Thomas E. Kerwin, Esq., and Harry Routzohn, Esq., be and each is hereby associated as an Attorney for the defendants; and that they be admitted to practice in this Court only for the purpose of appearing as one of the Attorneys in this cause.

Upon motion of Mr. Zirpoli, It Is Ordered that the Second Count of the Indictment as to each and every defendant this day on trial be dismissed.

Thereupon the following persons, viz: [121]

1. William J. Nugent,
2. Elizabeth W. Newman,
3. Rowland P. Kearns,
4. Lynda Buchanan,
5. George A. Nicholls,
6. Ida Louisa Lindbeck,
7. Augusta T. Austin,

8. Lillian T. Bolin,
9. Charlotte T. Heckman,
10. Louis H. Heard,
11. Mabelle D. Nelson,
12. William B. Brandenburg,

twelve good and lawful jurors, were, after being duly examined under oath, accepted and sworn to try the issues joined herein.

Pursuant to Section 417-A of Title 28 of the U. S. Code, the Court now finds that this trial is likely to be a protracted one and directed the calling of two additional Jurors to sit with the jury and to be known as "Alternate Jurors," and to be drawn from the same source and in the manner, and having the same qualifications as the Jurors already accepted.

Thereupon the following persons, viz:

1. Mrs. Miriam Westerman,
2. Mrs. Elizabeth Gray,

two good and lawful jurors, were, after being duly examined under oath, accepted and sworn as Alternate Jurors to try the issues joined herein.

Mr. Clark made a statement to the Court and Jury on behalf of the United States. Mr. Routzohn, Mr. Tuttle, Mr. Tobriner, Mr. Todd, Mr. Faulkner and Mr. Baigalupi made statements to the Court and Jury on behalf of the defendants.

The hour of the adjournment having arrived, the Court admonished the Jury, and the further trial hereof was continued until Wednesday, November 12, 1941, at 10 o'clock A.M., and the Jury excused until 2 o'clock P. M. [122]

[Title of District Court and Cause.]

**BILL OF EXCEPTIONS ON BEHALF OF
CHRISTIAN A. WILDER AND CHARLES
GUSTAFSON**

Be It Remembered:

On June 26, 1940, the Grand Jury of the United States in and for the Northern District of California found and returned to, and before the above-entitled court its indictment herein. On June 26, 1940, a citation was issued and directed to Brannan Street Planing Mill, a partnership, as follows: [123]

“Northern District of California, ss.

The President of the United States of America,
To the Marshal of the United States of
America, for the Northern District of Cali-
fornia—Greeting:

Whereas, at the Southern Division of the United States District Court for the Northern District of California, begun and held at the City of San Francisco, within and for the District aforesaid, on the 26/day of June A.D. 1940, the Grand Jurors in and for the said Division and District brought into the said Court a True Bill of Indictment against Brannan Street Planing Mill, a partnership composed of Albert B. Veyhle and Charles Gustafson, Defendant, 560 Brannan Street, San Francisco, Calif., for violation of 26 Stat. 209, secs. 1 and 2 (15 U.S.C.A. Secs. 1 and 2), Violation of anti-trust laws.

Now, Therefore, we do hereby empower and strictly charge and command you, the said Marshal, that you cite and admonish the said Defendant, if it shall be found in your District, that it be and appear before the said District Court within ten (10) days after service hereof, at 10 o'clock in the forenoon, at the Court Room thereof, in the City of San Francisco, State of California, then and there to answer the said Indictment, and to make its allegations in that behalf.

And Have You Then and There This Writ.

Witness, the Honorable A. F. St. Sure, Judge of said Court, this 26th day of June, in the year of our Lord one thousand nine hundred and forty and of our Independence the one hundred and sixty-fourth.

WALTER B. MALING,

Clerk

By M. E. VAN BUREN

Deputy Clerk

FRANK J. HENNESSY

United States Attorney"

The citation was served on Brannan Street Planing Mill on July 8, 1940, and returned on July 25, 1940.

On June 26, 1940, a citation was issued and directed to Sage & Wilder, a partnership, as follows:

“Northern District of California, ss.

The President of the United States of America,
To the Marshal of the United States of
[124] America, for the Northern District
of California—Greeting:

Whereas, at the Southern Division of the
the United States District Court for the North-
ern District of California, begun and held at
the City of San Francisco, within and for the
District aforesaid, on the 26 day of June A.D.
1940, the Grand Jurors in and for the said
Division and District brought into the said
Court a True Bill of Indictment against Sage
& Wilder, a partnership, composed of Jesse L.
Sage and Christian A. Wilder, Defendant, 2156
San Bruno Avenue, San Francisco, Calif., for
violation of 26 Stat. 209, Secs. 1 and 2 (15
U.S.C.A. Secs. 1 and 2) Violation of anti-trust
laws.

Now Therefore, we do hereby empower and
strictly charge and command you, the said Mar-
shal, that you cite and admonish the said De-
fendant, if it shall be found in your District,
that it be and appear before the said District
Court within ten (10) days after service hereof,
at 10 o'clock in the forenoon, at the Court Room
thereof, in the City of San Francisco, State of
California, then and there to answer the said
Indictment, and to make its allegations in that
behalf.

And Have You Then and There This Writ.
Witness, the Honorable A. F. St. Sure, Judge
of said Court, this 26th day of June, in the year
of our Lord one thousand nine hundred and
forty and of our Independence the one hundred
and sixty-fourth.

WALTER B. MALING

Clerk

By M. E. VAN BUREN

Deputy Clerk

FRANK J. HENNESSY

United States Attorney"

The citation was served on Sage & Wilder on July 1, 1940, and returned on July 2, 1940.

On June 26, 1940, warrants were issued for the arrest of the individual defendants named in paragraph 22 of the indictment.

No warrants were issued for the arrest of Christian A. Wilder or Jesse L. Sage, his partner in the copartnership of Sage & Wilder, or for the arrest of Charles Gustafson or Albert B. Veyhle, his partner in the copartnership of Brannan Street Planing Mill, until October 16, 1940, when warrants were issued in the circumstances hereafter described.

On July 12, 1940, an appearance was filed herein on [125] behalf of Brannan Street Planing Mill, a partnership, and Sage & Wilder, a partnership, the appearance reading as follows:

[Title of Court and Cause omitted]

**“ATTORNEYS’ WRITTEN APPEARANCE
FOR CERTAIN DEFENDANTS**

To Mr. Walter B. Maling, Clerk:

Please enter our appearance in the above entitled action as the attorneys for the following defendants, viz:

Lumber Products Association, Inc., a corporation, 3196-24th Street, San Francisco, California;

Acme Manufacturing Co., Inc., a corporation, 345 Bay Shore Boulevard, San Francisco, California;

J. A. Hart Mill & Lumber Co., individual, Jerrold and Napoleon Streets, San Francisco, California;

Warden Brothers, a partnership, 2501 Army Street, San Francisco, California;

Brannan Street Planing Mill, a partnership, 560 Brannan Street, San Francisco, California;

Sage & Wilder, a partnership, 2156 San Bruno Avenue, San Francisco, California;

Liberty Mill & Cabinet Shop, individual, 1433 Van Dyke Avenue, San Francisco, California;

Eureka Sash, Door & Molding Mills, a corporation, 1715 Mission Street, San Francisco, California;

Carl Warden, president of The Lumber Products Association, Inc., and partner in Warden Bros.;

Harry W. Gaetjen, secretary of The Lumber Products Association, Inc.;

Charles Monson, president of The Lumber Products Association, Inc., and President of the Acme Manufacturing Co., Inc.;

Fred Spencer, president of the Eureka Sash Door and Moulding Mills;

W. P. Holmes Mill & Cabinet Shop, individual, Sixth and Channel Streets, San Francisco, California.

**BROBECK, PHLEGER &
HARRISON**

Crocker Bldg., S. F.

JAMES M. THOMAS

703 Market Street, S. F.

Attorneys for the Defendants
above named." [126]

No appearance was filed on behalf of Charles Gustafson or on behalf of Christian A. Wilder until November 28, 1940.

On July 15, 1940, Sage & Wilder, a partnership, and Brannan Street Planing Mill, a partnership, were arraigned, each as a partnership, and the corporate defendants and the individual defendants named in paragraph 22 of the indictment were arraigned herein at the same time, but Charles Gustafson and Christian A. Wilder were not arraigned.

On October 1, 1940, Brannan Street Planing Mill, a partnership, and Sage & Wilder, a partnership, before submitting any plea or taking any other action in this cause, filed herein a motion as follows:

[Title of Court and Cause omitted]

**"MOTION OF DEFENDANTS WARDEN
BROTHERS, BRANNAN STREET
PLANING MILL, SAGE & WILDER,
AND LIBERTY MILL AND CABINET
SHOP TO QUASH INDICTMENT**

The defendants, Warden Brothers, a partnership, Brannan Street Planing Mill, a partnership, Sage & Wilder, a partnership, and Liberty Mill and Cabinet Shop, a partnership, severally move the court to quash the indictment and each of the two counts thereof on the ground that said indictment and the two counts thereof are not sufficient in law to require these defendants to plead thereto, and for special reasons these defendants specify that each of these defendants is a partnership and not a person, corporation or association; that the indictment and each of the two counts purport to indict these defendants as partnerships, and that a partnership, as such, cannot be indicted for a crime.

J. M. THOMAS

**BROBECK, PHLEGER &
HARRISON**

Attorneys for defendants,

Warden Brothers, et al."

On October 1, 1940, a demurrer to the indictment on behalf of Brannan Street Planing Mill, a partnership, and Sage & Wilder, a partnership, was

filed herein, said demurrer being set out in the record on appeal prepared herein under Rule VIII of the [127] "Rules of Practice and Procedure after Plea of Guilty, Verdict on Finding of Guilt, in Criminal Cases Brought in the District Courts of the United States and in the Supreme Court of the District of Columbia", promulgated by the Supreme Court of the United States.

On October 16, 1940, the above-entitled court made an order directing the issuance of bench warrants against Charles Gustafson and Christian A. Wilder, the order reading as follows:

[Title of Court and Cause omitted.]

"ORDER

Due cause having been shown therefor, it is hereby ordered that bench warrants should issue for the following named persons, whose addresses appear opposite their respective names:

Anna K. Warden, 2501 Army Street, San Francisco, California

Carl A. Warden, 2501 Army Street, San Francisco, California

Albert B. Veyhle, 560 Brannan Street, San Francisco, California

Charles Gustafson, 560 Brannan Street, San Francisco, California

Jesse L. Sage, 2156 San Bruno Avenue, San Francisco, California

Christian A. Wilder, 2156 San Bruno Avenue, San Francisco, California

Andrew Nelson, Tenth and Ohio Streets, Richmond, California

Albert C. Nelson, Tenth and Ohio Streets, Richmond, California

George Randolph, 661 Golden Gate Avenue, San Francisco, California

Herman Sichel, 661 Golden Gate Avenue, San Francisco, California

Ella Bateman, 1915 Bryant Street, San Francisco, California

Jessie Bateman, 1915 Bryant Street, San Francisco, California

Phylliss Dennis, 1915 Bryant Street, San Francisco, California

The clerk of this court is accordingly authorized and instructed to issue said bench warrants for the arrest of the above-entitled persons.

A. F. ST. SURE

Judge of the United States
District Court

October 16, 1940"

On October 16, 1940, pursuant to said order, a bench warrant was issued out of the above-entitled court directed to Charles Gustafson, the bench warrant reading thus: [128]

"UNITED STATES OF AMERICA

Northern District of California—ss.

Filed: Oct. 28 - 1940. Walter B. Maling,

Clerk

MD 46573 Crim.

Received Oct. 16, 1940. U. S. Marshal's Office, San Francisco, Calif.

To the Marshal of the United States of America, for the Northern District of California, and his Deputies, or any or either of them,

No. 26977S.

Bail \$1,000.00.

Greeting:

Whereas, at the Southern Division of the United States District Court for the Northern District of California, begun and held at the City and County of San Francisco, within and for the district aforesaid, on the 26th day of June, in the year of our Lord one thousand nine hundred and forty the Grand Jurors in and for the said Division and District brought into the said Court a true Bill of Indictment against Charles Gustafson, 560 Brannan Street, San Francisco, California, for violation of 26 Stat. 209, §1 and 2 (15 U.S.C. § 1 and 2) Violation of anti-trust laws as by the said Indictment, now remaining on file and of record in said Court, will fully and at large appear; to which Indictment the said Charles Gustafson has not yet appeared or pleaded:

Now, therefore, you are hereby commanded in the name of the President of the United States of America, to apprehend the said

Charles Gustafson and him bring before the said Court, at the United States District Court Room, in the City and County of San Francisco, to answer the Indictment aforesaid.

Witness: The Hon. A. F. St. Sure, Judge of the said District Court, and the seal thereof, at the City and County of San Francisco, the 16th day of October, A. D. 1940

Attest:

WALTER B. MALING, Clerk

By M. E. VAN BUREN

Deputy Clerk

FRANK J. HENNESSY

U. S. Attorney"

On October 28, 1940, Charles Gustafson was arrested by the United States Marshal for the Northern District of California pursuant to the warrant. The warrant was returned on October 28, 1940, the return reading thus: [129]

"MARSHAL'S OFFICE

United States of America, Northern District of California.

In obedience to the Warrant, I have the body of the said Charles Gustafson before the Honorable the United States Commissioner Ernest E. Williams at San Francisco in and for the Northern District of California, this 28th day of October, A. D. 1940, where he was released on bond.

Defendant surrendered at Marshal's office.

GEORGE VICE,

U. S. Marshal.

By CHARLES T. McCARTHY,

Deputy U. S. Marshal."

On November 1, 1940, Charles Gustafson filed herein a certain bail bond in the amount fixed by order of court and in the form required by law and was released from custody on bail.

On October 16, 1940, pursuant to said order of the same day, a bench warrant was issued out of the above-entitled court directed to Christian A. Wilder, the bench warrant reading as follows:

"UNITED STATES OF AMERICA.

Northern District of California—ss.

Received Oct. 16, 1940, U. S. Marshal's Office, San Francisco, Calif.

To the Marshal of the United States of America, for the Northern District of California, and his Deputies, or any or either of them,

Greeting:

Whereas, at the Southern Division of the United States District Court for the Northern District of California, begun and held at the City and County of San Francisco, within and for the district aforesaid, on the 26 day of June, in the year of our Lord one thousand nine hundred and forty the Grand Jurors in and for

the said Division and District brought into the said Court a true Bill of Indictment against Christian A. Wilder, 2156 San Bruno Avenue, San Francisco, California, for violation of 26 Stat. 209, § 1 and 2 (15 U.S.C.A. §1 and 2) violation of anti-trust laws, as by the said Indictment, now remaining on file and of record in said Court, will fully and at large appear; to which Indictment the said Christian A. Wilder has not yet [130] appeared or pleaded:

Now, Therefore, You are hereby commanded in the name of the President of the United States of America, to apprehend the said Christian A. Wilder and him bring before the said Court, at the United States District Court Room, in the City and County of San Francisco, to answer the Indictment aforesaid.

Witness: The Hon. A. F. St. Sure, Judge of the said District Court, and the seal thereof, at the City and County of San Francisco, the 16th day of October, A.D. 1940.

Attest:

WALTER B. MALING,

Clerk.

By M. E. VAN BUREN,

Deputy Clerk.

FRANK J. HENNESSY,

U. S. Attorney."

On October 24, 1940, Christian A. Wilder was arrested by the United States Marshal for the Northern District of California pursuant to the warrant.

The warrant was returned on October 24, 1940, the return reading thus:

"MARSHAL'S OFFICE

United States of America, Northern District of California.

In obedience to the Warrant, I have the body of the said Christian A. Wilder before the Honorable the United States Commissioner Ernest E. Williams at San Francisco, in and for the Northern District of California, this 24th day of October, A.D. 1940, where he was released on bond.

Defendant Surrendered at Marshal's Office.

GEORGE VICE,

U. S. Marshal.

By JOSEPH J. KENNEDY,

Deputy U. S. Marshal."

On October 25, 1940, Christian A. Wilder filed herein a certain bail bond in the amount fixed by order of court and in the form required by law and was released from custody on bail.

On November 12, 1940, before being arraigned and before [131] submitting any plea or taking any other action in this cause, Charles Gustafson filed herein a motion as follows:

[Title of Court and Cause omitted.]

**“MOTION OF CHARLES GUSTAFSON TO
QUASH BENCH WARRANT, TO VA-
CATE ORDER FOR ISSUANCE THERE-
OF, AND TO DISCHARGE BAIL.**

Charles Gustafson, appearing specially for the sole purpose of making this motion, hereby moves the court as follows:

(1) To quash the bench warrant for his arrest issued by this court on October 16, 1940, pursuant to which Charles Gustafson was arrested by the United States Marshal for the Northern District of California on the 28th day of October, 1940;

(2) To vacate the order for the issuance of said bench warrant, which said order was made and filed on October 16, 1940;

(3) To discharge said Charles Gustafson and the sureties from all liability on the bail bond filed by said Charles Gustafson on November 1, 1940.

This motion is made on the ground that there is no indictment against the said Charles Gustafson, that no such indictment has ever been returned, that the order for issuance of said warrant and the issuance of said warrant itself was made upon the mistaken assumption that the grand jurors had brought into the above named court on June 26, 1940, a true bill of indictment against the said Charles Gustafson

for violation of '26 Stat. 209 § 1 and 2 (15 U. S. C. A. § 1 and 2), Violation of anti-trust laws'.

This motion is based upon all the papers on file herein, including the indictment, the order for issuance of bench warrant, the bench warrant, and the bail bond filed by Charles Gustafson.

Dated: November 12, 1940.

CHARLES GUSTAFSON.

J. M. THOMAS

BROBECK, PHLEGER

& HARRISON

Attorneys for Charles Gustafson."

On November 12, 1940, before being arraigned and before submitting any plea or taking any other action in this cause, Christian A. Wilder filed herein a motion as follows: [132]

[Title of Court and Cause omitted.]

"MOTIONS OF ANNA K. WARDEN, ALBERT B. VEYHLE, JESSE L. SAGE AND CHRISTIAN A. WILDER TO QUASH BENCH WARRANTS, TO VACATE ORDER FOR ISSUANCE THEREOF, AND TO DISCHARGE BAIL.

Each of the following persons, to wit, Anna K. Warden, Albert B. Veyhle, Jesse L. Sage and Christian A. Wilder, appearing specially for the sole purpose of making his or her respective mo-

tion, set forth below, and acting for himself or herself alone and not for any other, hereby moves the court as follows:

(1) To quash the bench warrant for movant's arrest issued by this court on October 16, 1940, pursuant to which the movant was arrested by the United States Marshal for the Northern District of California on the 24th day of October, 1940;

(2) To vacate the order for the issuance of said bench warrant, which said order was made and filed on October 16, 1940;

(3) To discharge said movant and the sureties from all liability on the bail bond filed by said movant on October 25, 1940.

Each of these motions is made on the ground that there is no indictment against the said movant, that no such indictment has ever been returned that the order for issuance of said warrant and the issuance of said warrant itself were made upon the mistaken assumption that the grand jurors had brought into the above named court on June 26, 1940, a true bill of indictment against the said movant for violation of '26 Stat. 209 § 1 and 2 (15 U.S.C.A. § 1 and 2), Violation of anti-trust laws'.

The motions are based upon all the papers on file herein, including the indictment, the order for issuance of bench warrant, the bench warrants, and the bail bonds filed by the several movants.

Dated: November 12, 1940.

ANNA K. WARDEN

ALBERT B. VEYHLE

JESSE L. SAGE

CHRISTIAN A. WILDER

J. M. THOMAS

BROBECK, PHLEGER

& HARRISON

Attorneys for Anna K. Warden,

Albert B. Veyhle, Jesse L. Sage

and Christian A. Wilder." [133]

Said motions were duly made and submitted, and the demurrer was submitted, and on November 22, 1940, the above-entitled court made and entered its orders as follows:

[Title of Court and Cause omitted.]

"ORDER

Ordered:

1. That the motions of Warden Brothers (a partnership described in the indictment as composed of Anna K. Warden and Carl A. Warden, copartners), Brannan Street Planing Mill (a partnership described in the indictment as composed of Albert B. Veyhle and Charles Gustafson, copartners), Sage & Wilder (a partnership described in the indictment as composed of Jesse L. Sage and Christian A. Wilder), and Liberty Mill & Cabinet Shop (a movant de-

scribed in the motion papers as a partnership) to quash the indictment be and each of them is hereby Denied;

2. That the motions of Anna K. Warden, Albert B. Veyhle, Jesse L. Sage, Christian A. Wilder, and Charles Gustafson, to quash bench warrants, to vacate order for issuance thereof, and to discharge bail, be and each of them is hereby Denied;

* * *

13. That the demurrers of The Lumber Products Association, Inc., a corporation, and Acme Manufacturing Co., Inc., a corporation, J. A. Hart Mill & Lumber Co., Warden Brothers (a partnership described in the indictment as composed of Anna K. Warden and Carl A. Warden, copartners), Brannan Street Planing Mill (a partnership described in the indictment as composed of Albert B. Veyhle and Charles Gustafson, copartners), Sage & Wilder (a partnership described in the indictment as composed of Jesse L. Sage and Christian A. Wilder), Liberty Mill & Cabinet Shop (a demurrant described as a partnership in said demurrer), Eureka Sash, Door & Molding Mills, a corporation, W. P. Holmes Mill & Cabinet Shop, Carl Warden, Harry W. Gaetjen, Charles Monson, and Fred Spencer, be and each of them is hereby Overruled;

* * *

In regard to the motions to quash bench war-

rants and vacate order for issuance thereof made by certain defendants, the court's ruling thereon is predicated upon repeated statements made by the Special Assistant to the Attorney General in open court, that the Government does not intend to prosecute the partnership entities as such, and that it was the Government's original intention to proceed only against the individual members of such partnerships. I regard this attitude of Government Counsel as in the nature of a nolle prosequi, or an agreement on the part of the Government not to prosecute said partnerships as such, but only the individual members thereof. The indictment sufficiently charges [134] these individual defendants, describing them as members of such partnerships.

Dated: November 22, 1940.

A. F. ST. SURE

United States District Judge"

FIRST EXCEPTION

To the court's order overruling the demurrer of Brannan Street Planing Mill, a partnership, and of Sage & Wilder, a partnership, said defendants then and there excepted.

SECOND EXCEPTION

To the court's order denying the motions of Brannan Street Planing Mill, a partnership, and of Sage & Wilder, a partnership, to quash the indictment, said defendants then and there excepted.

THIRD EXCEPTION

To the court's order denying the motion of Charles Gustafson to quash bench warrant, to vacate order for issuance thereof, and to discharge bail, Charles Gustafson then and there excepted.

FOURTH EXCEPTION

To the court's order denying the motion of Christian A. Wilder to quash bench warrant, to vacate order for issuance thereof, and to discharge bail, Christian A. Wilder then and there excepted.

On November 25, 1940, before being arraigned and before submitting any other plea, Charles Gustafson and Christian A. [135] Wilder filed herein a plea to the jurisdiction in words as follows:

[Title of Court and Cause omitted.]

PLEA TO THE JURISDICTION OF ANNA
K. WARDEN, ALBERT B. VEYHLE,
JESSE L. SAGE, CHRISTIAN A. WIL-
DER AND CHARLES GUSTAFSON.

Now come Anna K. Warden, Albert B. Veyhle, Jesse L. Sage, Christian A. Wilder and Charles Gustafson, claimed to be defendants in the above-entitled cause, and for plea herein say that this Court ought not to take cognizance of the in-

dictment as against them, or any of them, for the reason that this Court has no jurisdiction over them or any of them and no jurisdiction to try and determine this cause against them or any of them, on the ground that there is no indictment against them or any of them; that no such indictment has ever been returned; that the order for the issuance of bench warrants for their arrests, which said order was made on October 16, 1940, and the issuance of the bench warrants were made upon the mistaken assumption that the Grand Jurors had brought into the above named court on June 26, 1940, a true bill of indictment against the said persons for violation of '26 Stat. 209 § 1 and 2 (15 U.S.C.A. §1 and 2), Violation of anti-trust laws.

Wherefore, said parties, and each of them, pray judgment whether they or any of them shall be held bound to answer further to said indictment.

Dated: November 25, 1940.

**J. M. THOMAS,
BROBECK, PHLEGER
& HARRISON**

Attorneys for Anna K. Warden, Albert B. Veyhle, Jesse L. Sage, Christian A. Wilder and Charles Gustafson."

On November 25, 1940, the court made and entered its order overruling said plea to the jurisdiction.

FIFTH EXCEPTION

To the order overruling the plea to the jurisdiction, Charles Gustafson and Christian A. Wilder then and there excepted.

Thereupon, on November 25, 1940 Charles Gustafson and Christian A. Wilder were arraigned, and on November 26, 1940, Charles Gustafson and Christian A. Wilder filed herein their de- [136] murrer to the indictment, demurrer being set out in the record on appeal prepared herein under Rule VIII of the "Rules of Practice and Procedure after Plea of Guilty, Verdict on Finding of Guilt, in Criminal Cases Brought in the District Courts of the United States and in the Supreme Court of the District of Columbia", promulgated by the Supreme Court of the United States.

On December 2, 1940, the court made and entered its order herein overruling said demurrer.

SIXTH EXCEPTION

To the order overruling said demurrer, Charles Gustafson and Christian A. Wilder then and there excepted.

On November 1, 1941, Christian A. Wilder and Charles Gustafson entered herein, and the court received, pleas of nolo contendere to the first count of the indictment.

On November 6, 1941, upon ex parte motion by counsel for the government, a dismissal of the indictment was entered with respect to Sage & Wilder and Brannan Street Planing Mill.

On December 20, 1941, the second count of the indictment was dismissed against Charles Gustafson and Christian A. Wilder.

On December 20, 1941, the court herein rendered its sentence and judgment on the first count of the indictment against Charles Gustafson and Christian A. Wilder, which sentence and judgment was that each pay a fine of \$1,000.00.

On January 3, 1942, the court fixed February 23, 1942⁹ as the date by which appellants Christian A. Wilder and Charles Gustafson should procure to be settled and should file with the Clerk of the above-entitled court a bill of exceptions setting forth the proceedings upon which said appellants wished to rely in addition to those shown by the Clerk's record as described in Rule [137] VIII of the "Rules of Practice and Procedure after Plea of Guilty, Verdict on Finding of Guilt, in Criminal Cases Brought in the District Courts of the United States and in the Supreme Court of the District of Columbia", promulgated by the Supreme Court of the United States.

Charles Gustafson and Christian A. Wilder tender and present the foregoing as their bill of exceptions in this case and pray that the same may be settled and made a part of the record.

STIPULATION

It is hereby stipulated and agreed that the foregoing may be submitted to the District Judge to be ordered on file as the bill of exceptions in the above entitled matter.

Dated: February 19, 1942.

United States Attorney

Special Assistants to the
Attorney General
JAMES M. THOMAS
MAURICE E. HARRISON
MOSES LASKY
BROBECK, PHLEGER &
HARRISON

Attorneys for Appellants
Charles Gustafson and
Christian A. Wilder [138]

ORDER SETTLING BILL OF EXCEPTIONS

Upon the annexed stipulation, the within bill of exceptions is hereby settled and allowed, and ordered to be filed and made a part of the transcript of record herein.

Dated: February 20, 1942.

A. F. ST. SURE

United States District Judge

[Endorsed]: Filed Feb. 20, 1942. [139]

[Title of District Court and Cause.]

**PROPOSED BILL OF EXCEPTIONS OF THE
UNION APPELLANTS.**

Be It Remembered that commencing on the 10th day of November, 1941, the above entitled cause came on regularly for hearing before the above entitled Court, Honorable A. F. St. Sure, Judge, presiding in the United States Court House and Post Office Building, 7th and Mission Streets, San Francisco, California.

The plaintiff was represented by Tom C. Clark, Esq., Charles S. Burdell, Esq., Wallace Howland, Esq., Special Assistants to the Attorney General, A. J. Zirpoli, Esq., Assistant United States Attorney, and Walter M. Lehman, Esq., Special Attorneys.

The defendants, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America; The United Brotherhood of Carpenters and Joiners of [140] America, Millmen's Union No. 42; The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 262; The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550; The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 1956; J. F. Cambiano, M. D. Cicinato, D. J. Edwards, Charles Helbing, C. H. Irish, W. P. Kelly, H. Lidley, Walter O'Leary, Emil H. Ovenberg, James Ricketts, Charles Roe, Dave Ryan, Otto W. Sammett, J. P. Sholden, George S. Smoot and W. L. Wilcox, were

represented by Hugh K. McKevitt, Esq., Harry Routzohn, Esq., Joseph O. Carson, II., and Jack M. Howard.

The defendant, The United Brotherhood of Carpenters and Joiners of America, was represented by Charles H. Tuttle, Esq., Joseph O. Carson, Esq., Thomas E. Kerwin, Esq., and Hugh K. McKevitt, Esq.

The defendant, Alameda County Building & Construction Trades Council, was represented by Clarence E. Todd, Esq.

The defendant, San Francisco Building and Construction Trades Council, was represented by Mathew O. Tobriner, Esq., and Rinaldo Sciaroni, Esq.

The defendants, Braas & Kuhn Company, Commercial Fixture & Store Front Institute, L. & E. Emanuel, Inc., Fink & Schindler Co., Mullen Manufacturing Company, Joseph L. Emanuel, J. C. Ennes, Richard Kuhn, John Mullen, Oscar H. Ostlund, George Randolph, Leo Roselyn, Joseph L. Schmidt, Henry Schulte, Herman Sichel and Charles F. Stauffacher, were represented by Harold C. Faulkner, Esq., Charles Albert Adams, Esq. and Melbert B. Adams, Esq.

The defendants, Mangrum, Holbrook & Elkus, Eugene S. Elkus and S. Kulcher, were represented by Messrs. Bacigalupi, Elkus & Salinger, appearing by Tadini Bacigalupi, Esq.

The plaintiff moved the Court to dismiss the second count of the indictment, and said motion as to the second count only was granted. [141]

Thereupon, Mr. Tom C. Clark made the opening statement in behalf of the plaintiff.

Mr. Harry Routzohn made an opening statement in behalf of the defendants represented by him.

Mr. Charles H. Tuttle made an opening statement in behalf of the defendant, The United Brotherhood of Carpenters and Joiners of America.

Mr. Mathew O. Tobriner made an opening statement in behalf of the defendant, San Francisco Building and Construction Trades Council.

Mr. Clarence E. Todd made an opening statement in behalf of defendant, Alameda County Building and Construction Trades Council.

Mr. Harold C. Faulkner made an opening statement in behalf of the defendants represented by him.

Mr. Tadini Bacigalupi made an opening statement in behalf of the defendants Mangrum, Holbrook & Elkus, Eugene S. Elkus and S. Kulcher.

It was thereupon stipulated that all of the defendants on trial need not be in constant attendance and that if a particular defendant was wanted by the plaintiff he would be produced by counsel.

Thereupon, in the absence of the jury, Mr. Charles H. Tuttle in behalf of defendant, The United Brotherhood of Carpenters and Joiners of America, moved to dismiss upon the ground of the insufficiency of the indictment, and said motion was orally argued by Mr. Tuttle and joined in and submitted on the same argument by the other defendants on trial. Such motions were argued by Mr. Clark and Mr. Howland

in behalf of plaintiff, and in reply by Mr. Tuttle who delivered a list of authorities to [142] the court.

The several motions made to dismiss the indictment were denied and an exception in behalf of defendants noted.

The plaintiff called upon defendant, Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, to answer to a subpoena duces tecum served upon it and Dave Ryan responded to the subpoena duces tecum and was sworn as a witness. The witness testified that his full name was David Hays Ryan and that he held an office with the Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America.

Objection was made to the witness testifying on the ground that as a defendant he could not be compelled to be a witness against himself. Such objection was sustained and it was stipulated that Mr. Ryan was Secretary of such organization and was in charge of the records, and that another witness would be produced with the books.

After colloquy between counsel concerning trial and stipulations and the production of books and records, the plaintiff called upon the United Brotherhood of Carpenters and Joiners of America, Millmen's Local No. 42, to respond to the subpoena duces tecum served upon it.

Thereupon, Alfred Paul Fromm was called as a witness in behalf of plaintiff, was duly sworn, and testified as follows:

ALFRED PAUL FROMM

Direct Examination

By Mr. Howland:

I hold at the present time the position of Recording Secretary in Local No. 42 of the United Brotherhood of Carpenters and Joiners of America, and have been served with a subpoena duces tecum addressed to such Local, and I also got one for myself. I turned over such subpoena duces tecum to the lawyers. [143]

“Mr. Howland: Q. I will ask you, Mr. Fromm, whether or not in your official capacity you have custody and access to any of the records and documents of the United Brotherhood of Carpenters and Joiners of America, Millmen’s Union No. 42?

“A. Yes.

“Mr. Howard: I ask that the answer go out for the purpose of the objection.

“The Court: Yes, it may go out.

“Mr. Howard: I wish to object to this question and object to all further questions of this witness on the ground that he, as identified by the record, is a member of Local No. 42, one of the defendants charged in the indictment and on trial, here, and as such member of an unincorporated association is required in violation of the Fifth Amendment to give testimony against himself.

“The Court: Overruled.

“Mr. Howard: May we have an exception?

“The Court: Yes.

(Testimony of Alfred Paul Fromm.)

“Mr. Howland: Q. Have you examined these books and records of which you have custody and access for the purpose of collecting therefrom the papers called for by the subpoena duces tecum addressed to Local 42? A. Yes.

“Mr. Howard: May it be understood that we have the same objection and exception?

“The Court: Yes, the same objection and an exception. The objection is overruled and an exception noted.

“Mr. Howland: Q. Referring to paragraph No. 1 of that subpoena, Mr. Fromm, do you have with you any of the documents called for therein, and that paragraph reads, constitution, charter, articles of association, and by-laws of the addressee of this subpoena? A. I have.

“Q. Will you produce them, please?

“Mr. Howard: If your Honor please, at this time I wish [144] to object to the question and the production through this witness of any books, papers, or documents of Local No. 42 on the following grounds, first that such documents or papers are the private books, documents and papers of this defendant unincorporated association, and of each individual defendant member of that association who is a defendant herein. The requirement of the production of those private books, documents and papers is in violation of the Fourth Amendment in that it constitutes an unlawful search or seizure, and it violates the Fifth Amendment to the Constitution in that it

(Testimony of Alfred Paul Fromm.)

requires the association defendant, and each member defendant to give testimony against himself. Now, if your Honor please, I think that this objection raises basic questions that will go to the whole line of testimony.

"The Court: Yes.

"Mr. Howard: We are prepared to argue it, if your Honor wishes.

"The Court: I do not care to hear any argument. The objection is overruled.

"Mr. Howard: May we have the same stipulation as to the entire line of testimony?

"The Court: Yes.

"Mr. Howard: And an exception.

"The Court: Yes.

"Mr. Howland: Q. Are they here?

"A. Yes.

"Q. Have you got them?

"A. Shall I produce them?

"Q. If you have them produce them.

"Mr. Faulkner: While the witness is getting these records might I suggest—

"The Court: Let us not interrupt this.

"Mr. Faulkner: This will apply to the objections.

"The Court: Very well. [145]

"Mr. Faulkner: And then we won't have to repeat that same objection.

"The Court: Very well, read it.

"Mr. Faulkner: It is stipulated between all counsel in the case concerning the matter of objec-

(Testimony of Alfred Paul Fromm.)

tions: At the trial of the above entitled cause any and all objections made to the introduction of evidence, unless otherwise stated at the time of such objection by either of the counsel for defendants representing any of the defendants on trial, shall be deemed for all purposes to have been made for each separate defendant on trial, to all intents and purposes as though each of said defendants separately objected and that all objections taken to any rulings on said objections shall be deemed an objection for each of the defendants on trial to all intents and purposes as though each defendant separately objected and each defendant separately excepted to any adverse ruling.

"The Court: That is satisfactory to the Court.

"Mr. Faulkner: Thank your Honor."

I have the records called for in paragraph one of the subpoena, including the constitution, charter, articles of association and by-laws, which I produce. Thereupon, four folders produced by the witness were marked for identification as plaintiff's Exhibits 1 to 4, respectively. The booklet marked Government Exhibit 1 for identification is by-laws of Local Union No. 42 as approved by the General Office in 1940, and still in effect. Booklet marked for identification No. 2 is the by-laws of the Bay District Council of Carpenters, approved on May 26, 1939 by the General Office and in effect since that date. Booklet marked for identification Government's Exhibit No. 3 is the by-laws of Local 42, being the same

(Testimony of Alfred Paul Fromm.)

as No. 1. Booklet marked for identification Government's Exhibit No. 4 is by-laws of Local Union 42, running from 1913 when approved by the General Office. [146]

"Q. Referring now to paragraph 2 of the subpoena, I will ask you whether or not you have brought with you books, ledgers, minute books, papers, and records and documents evidencing or recording or purporting to describe the proceedings and meetings of the addressee of this subpoena, including meetings of directors, trustees, members, committees, agents or officers during the period from January 1, 1936 to June 26, 1940.

"A. Yes, I think I have all of those. I have not had those possibly that long, since 1935—from 1935 up to 1940.

"Mr. Howland: Will you please mark for identification with the appropriate serial numbers the four books which the witness has produced?

"Mr. Howard: If your Honor please, we wish to make the further objection that this omnibus demand by the subpoena for documents, minutes and records as are sought to be identified here is unreasonable and an unlawful search and seizure under the Constitution of the United States.

"The Court: Overruled.

"Mr. Howard: Exception.

(The documents were marked U. S. Exhibits 5, 6, 7 and 8 For Identification.)

(Testimony of Alfred Paul Fromm.)

"Mr. Howland: I hand you these four books which have now been marked for Identification Exhibits 5, 6, 7 and 8, Mr. Fromm, and ask you if you will tell me just what they are.

A. These are the minutes of the meetings of Millmen's Local Union 42.

Q. What dates are covered by the book that has been marked Exhibit?

A. Exhibit 5 covers from July 30, 1935 to February 16, 1937.

Q. Referring to Exhibit 6, I will ask you what that is.

"Mr. Howard: May it be understood that the last objection also goes to this line of questions, your Honor? [147]

"The Court: Yes.

A. No. 6 covers the minutes from April 4, 1939 to November 26, 1940.

"The Court: Your comprehensive objection may be understood to apply to all of the testimony of this witness.

"Mr. Howard: Very well, your Honor.

A. These are the minutes of Local Union No. 42 from February 23, 1937 to November 30, 1937.

"Mr. Howland: That is Exhibit No. 7, to which you just referred? A. Yes."

Exhibit for identification No. 8 is the minute book of Local No. 42 from December 1, 1937 to March, 1939. I have held the office of Recording Secretary of Local 42 for nearly three years.

(Testimony of Alfred Paul Fromm.)

Upon request by Mr. Roitzohn the Court made an order excluding witnesses from the court room.

My duties as Recording Secretary were to take down the meetings, mark the gentlemen present, make daily entries in the books as expenditures, etc. Some of the minutes are in my own handwriting. I got the position on July 5, 1938. I have held the position since 1938, except for about a month during July and August of 1941. The entries in the four books marked Exhibits 5 to 8 during that period were made by me, personally. I have custody of all the records and minutes going back to 1935, and books purported to have been made prior to the time I took office were turned over to me. I have quite a few of the contracts and agreements, described in paragraph 3 of the subpoena, executed during the period from September 1, 1936 to June 26, 1940, but I believe the originals go to the District Council of Carpenters.

The witness thereupon produced folders which were marked Government's Exhibits 9, 10, and 11 for identification, and the clerk was directed to number the contents of the folders consecutively, 11-A, 11-B etc., so that each paper be appropriately [148] marked, and a similar paper was marked U. S. Exhibit No. 12 for identification.

Folder marked for identification Exhibit 9 contains agreements of all members of the association in the City and County of San Francisco, and Local 42 is a party to each agreement. Folder for identi-

(Testimony of Alfred Paul Fromm.)

fication No. 10 contains agreements with the different wood-work companies in San Francisco. Folder marked Exhibit 11 contains miscellaneous notes and letters between different district councils and matters in which we are a party; also different agreements as they are throughout the State. The paper marked for identification Exhibit No. 12 is unsigned copy of an agreement.

"Q. Paragraph 4 of the subpoena duces tecum calls for the introduction of letters, telegrams, correspondence and memoranda between January 1, 1936, and June 20, 1940, between Local 42 and certain parties enumerated in the subpoena relating to certain subject matters?

"Mr. Faulkner: We object to that, if your Honor please, on the ground that the proper foundation had not been laid in this respect, that this gentleman on the stand, who had charge of the correspondence, that he wrote any of these letters or received them.

"The Court: Overruled.

"Mr. Faulkner: If that is a foundation to introducing them in evidence we object to them on that ground.

"The Court: Overruled.

"Mr. Faulkner: Exception.

"Mr. Howard: We also object generally on the ground of this method of dragnet without showing the materiality.

"The Court: I presume that is all preliminary. If it is not connected up properly you may move to strike it out.

(Testimony of Alfred Paul Fromm.)

"Mr. Howard: The objection to it is it acts as a bill [149] of discovery without any right in law to do so.

"The Court: Overruled.

"Mr. Howard: May we have an exception?

"The Court: Yes, I am willing to let it be understood that an exception will be noted to every ruling of the Court, so that you won't have to ask me that question every time. Is that agreeable to you?

"Mr. Howard: Yes.

"Mr. Faulkner: Does the Government acquiesce in that statement?

"The Court: I say I am willing that the record should show that an exception has been made to every ruling made in this case on behalf of each and every defendant.

"Mr. Faulkner: That is agreeable to Counsel for the Government?

"Mr. Howard: That is agreeable to the Government.

"The Court: You will understand that there is no necessity of voicing any exception whatever."

The papers contained in the folder now marked for identification Exhibit No. 11 are the correspondence, letters, telegrams and other papers called for in paragraph 4 of the subpoena, to the best of my ability, to find them. Folder marked for identification Exhibit No. 13 contains communications and copies of communications between Local Unions and District Councils. Exhibit No. 14 contains agree-

(Testimony of Alfred Paul Fromm.)

ments entered into at different times with the Local Union. I have the custody and control over the correspondence files of Local No. 42 and have had since July 1, 1938.

"Q. I will ask you to examine the papers contained in the folders marked 11 and 13 For Identification, and tell me if the papers contained therein are in fact original letters received by Local 42 and copies of letters which you have actually sent out on [150] behalf of Local 42 during that period?

"Mr. Howard: If your Honor please, I object to the question as being entirely immaterial, incompetent, and irrelevant, immaterial in that there is no foundation shown to these letters which might have been sent out to certain parties. I object to this question.

"The Court: It seems to me that objection has been covered by you and also by Mr. Faulkner. I will rule, however, so that you may note an exception.

"Mr. Howard: Note an exception.

"Mr. Howland: May I have the question read?

(Question repeated by the reporter.)

"The Court: You may proceed.

(The reporter read the last question.)

"The Witness: Yes, these are communications received by 42, but as far as making copies of communications going out from the local, I have never made a copy. I have never filed a copy of the original."

(Testimony of Alfred Paul Fromm.)

Cross-Examination

By Mr. Faulkner:

I am recording secretary of Millmen's Local Union No. 42 and did not prepare or sign any of the contracts which I identified as copies of contracts, nor was I present when any of them were signed.

Thereupon, Edwin Fred Schulze was called as a witness in behalf of plaintiff, was duly sworn, and testified as follows:

EDWIN FRED SCHULZE

Direct Examination

By Mr. Howland:

I am Recording Secretary of Millmen's Union Local No. 550 and have held that position for approximately a year and a half. I have custody and access to the records and files of said Local, and I have books and records and other papers of [151] Local 550 which have been subpoenaed.

"Mr. Howard: Q. Do you have any of the books and records and other papers of Local 550 which have been subpoenaed? A. I have.

"Mr. Howard: May I ask the answer go out until I object?

"The Court: The answer may go out.

"Mr. Howard: I guess that is a superabundance of precaution but it is understood the same objection goes now to this—

"The Court: Yes, yes."

(Testimony of Edwin Fred Schulze.)

The only by-laws we have are the by-laws of the District Council. We work strictly out of such by-laws, and Local 550 has adopted the by-laws of the District Council of Carpenters. I don't know definitely whether we have abided by all of the by-laws—we have some, and some not—we operate under the District Council. Booklet marked Exhibit No. 15 for identification is the by-laws of the District Council of Carpenters under which the Local 550 is operating. Paper marked for identification No. 16 is a photostatic copy of the charter of Local 550. Exhibit marked for identification No. 17 is the constitution of the United Brotherhood of Carpenters and Joiners of America, and is the constitution under which Local 550 operates. Book marked for identification No. 18 has the minutes from March 28, 1935 to June 17, 1938 and the book contains the minutes of the meetings of Local 550. I have at no time had anything to do with any minutes of the Six Counties Conference Committee which, I believe, has its own Secretary, and had no such minutes within my custody as Recording Secretary of Local 550. Book marked Exhibit No. 19 for identification is the minute book of Local 550, from July 12, 1929 to and including March 21, 1935; book marked Exhibit No. 20 for identification is minutes of April 19, 1940, to and including August 29, 1941; book marked Exhibit No. 21 is minutes of June 24, 1938, up to April 12, 1940. I was Recording Secretary of [152] Local 550 from July 12, 1940, up to

(Testimony of Edwin Fred Schulze.)

the present time, and the minutes purporting to cover that period are in my own handwriting. I having personally recorded the transactions of the minutes contained in the minute books. When I first became Recording Secretary of 550, records and minutes of meetings prior to my taking office were turned over to me and are contained in the previous entries in the same books.

I believe W. C. O'Leary has been Secretary of the Six Counties Conference Committee. I know some of the members of the Six Counties Conference Committee,—W. C. O'Leary, Emil Ovenberg, Albert Cooling and Albert Perry are members from our Local, and are all I know. I don't know any of the members from other locals. I am not a member of that committee myself.

I believe these are all our agreements. I have not gone over these agreements myself.

Thereupon, file of agreements was marked U. S. Exhibit No. 22 for identification, and the clerk was instructed to mark serially beginning with the letter "A" the several documents contained in the files at his convenience. The envelope now marked as Exhibit No. 22 are all the agreements. They are the agreements called for by the subpoena. I have some of the letters, telegrams, correspondence and communications referred to in paragraph 4 of the subpoena duces tecum. The two bundles of papers marked U. S. Exhibit Nos. 23 and 24 for identification contain the letters and communications asked

(Testimony of Edwin Fred Schulze.)

for in the subpoena, I believe. They are the communications that are received by 550 in due course of mail. I have custody of the correspondence files of the Local in connection with my duties as Recording Secretary. The bundle marked Exhibit No. 23 contains more correspondence received in our regular line of duty. I have some further correspondence and some other supplementary agreements called for by one or other of the subpoenas. [153]

Thereupon, a bundle produced was marked U. S. Exhibit No. 25 for identification. All of the correspondence called for is included in the things produced.

The ledger and day books which I have are not called for by the subpoena duces tecum and do not purport to report or describe proceedings and minutes in addition to the minute books.

Cross-Examination

By Mr. Faulkner:

The Six Counties Conference Committee is strictly a union organization.

Redirect Examination

By Mr. Howland:

United States Exhibits Nos. 26, 27 and 28 for identification are the by-laws of the District Council of Carpenters; No. 29 was the one produced before and these booklets are the by-laws adopted at the periods of time indicated by the dates on the front.

Thereupon, Mr. Howland called upon the United Brotherhood of Carpenters and Joiners of America to respond to the subpoena.

"Mr. Tuttle: I will call attention to the fact that this subpoena is directed solely to the United Brotherhood. The papers called for are in the hands or custody of thirty-six persons in Indianapolis. We have made these arrangements, which I hope will be satisfactory to your Honor and counsel, that Mr. Joseph O. Carson, II., who is an attorney in the office of his father, who is general counsel for the United Brotherhood, has gathered those papers together and we make no point that they are authentic papers from the files of the United Brotherhood. We have them here, so that if counsel is willing Mr. Carson can take the witness stand, or I can furnish you with the papers you ask for. [154]"

"The Court: Yes."

"Mr. Tuttle: Either course will be agreeable to us."

"The Court: Either course will be agreeable to the Court."

"Mr. Tuttle: If you put Mr. Carson on the stand you will get the papers quicker. Your Honor will appreciate that we have the same objection as we made before?"

"The Court: Yes, let that be the understanding."

"Mr. Tuttle: The same ruling and exception."

Thereupon,

JOSEPH O. CARSON, II

was called as a witness in behalf of plaintiff, was duly sworn, and testified as follows:

Direct Examination

By Mr. Howland:

I am appearing here pursuant to the subpoena duces tecum served on the United Brotherhood.

(By Mr. Tuttle):

In compliance with the request to produce the constitution, charter and other papers called for in paragraph 1 of the subpoena, we produce two printed books,—one, the constitution in effect April 1, 1929, and the last constitution in effect April 21, 1937, which includes the laws of the United Brotherhood. The documents were marked U. S. Exhibits Nos. 30 and 31 for identification.

(By Mr. Tuttle):

In response to paragraph 2 of the subpoena to produce the minute book and other papers, we have prepared a list which I believe is authentic and comprehensive, showing the members of the Executive Board of the United Brotherhood during the period. Such list was marked U. S. Exhibit No. 32 for identification. The list also covers the general representatives called for in paragraph 3 of the subpoena. The constitution does not use the phrase "general representatives," but presumably what is meant is the [155] organizers for that district and area.

(Testimony of Joseph O. Carson, II.)

The documents marked U. S. Exhibit No. 33 are the minutes of the meetings of the Executive Board.

The documents marked U. S. Exhibit No. 34 for identification are such contracts and copies of contracts had by the United Brotherhood and called for by paragraph 5 of the subpoena, as of June 6, 1936. There were none for 1937 in the files.

The documents U. S. Exhibit No. 35 for identification, are the papers described as being for 1938. The documents marked for U. S. Exhibit No. 36 for identification are for 1939. The documents marked U. S. Exhibit No. 37 for identification are for 1940. There were none for 1937 in the files.

The folders marked, respectively, U. S. Exhibits Nos. 38, 39, 40, 41, 42 and 43 for identification contain the correspondence referred to in paragraph 6 of the subpoena, and was all that could be found after a thorough search.

The booklets marked, respectively, U. S. Exhibits Nos. 44, 45, 46, 47 and 48 for identification, are five booklets starting with the year 1936 running to 1940, having a list of the firms authorized to use the Union Label.

Records relative to the names of officers and members of the Executive Board are kept in the official General Executive Board minutes which run back prior to the year 1900 and cover the entire period of time. Some of the officers and heads of the General Executive Board were appointed more than thirty years ago, and have been continuously on the payroll

(Testimony of Joseph O. Carson, II.)

under the dates set out in the list which was taken from the payroll records and confirmed by me on the records of the General Executive Board.

Appointments of the general representatives or general organizers were made under the constitution and there are no records showing the dates of such employment other than the certificate of appointment in the man's private possession and as [156] appears on the payroll record. The list was prepared from the payroll and compared with the individual, himself.

Thereupon,

CLARENCE EDMUND WILCHMAN

was called upon as a witness in behalf of plaintiff, was duly sworn, and testified as follows:

Direct Examination

By Mr. Howland:

I am Treasurer of Local Union No. 1956 of the United Brotherhood of Carpenters and Joiners of America and have been for about five months, and I am appearing pursuant to a subpoena duces tecum served upon that organization. I have the books, records and other papers called for by the subpoena which I could get, but will have access to more records tonight due to the fact that a member who has the key to the drawer is away. He will be able to return tomorrow morning.

(Testimony of Clarence Edmund Wilchman.)

:Thereupon, Braas & Kuhn was called upon to respond to the subpoena duces tecum.

Mr. Faulkner: There are items in the subpoena having for their purpose the establishment of the corporate existence and the names of officers and directors upon which we have offered a stipulation. If the records are asked for to prove them, we withdraw the stipulation.

"The Court: You ask the question and I will rule on it. Mr. Faulkner says he will stipulate as to the corporate entity.

"Mr. Howland: Very well, we will withdraw paragraphs Nos. 1 and 3 of the subpoena.

"The Court: There is no written stipulation regarding this?

"Mr. Faulkner: No, we can read it into the record later. I will stipulate that it is a corporation and has directors whom I will later disclose.

"Mr. Howland: Very well."

After colloquy by counsel, it was understood with [157] respect to paragraph 9 in the subpoena that it would be satisfactory to have the original books of entry setting forth the payroll and that an accurate record would be supplied showing the amount of money paid to employees of the union defendants during dates specified, and that the minute book should be produced and portions deemed material and competent read into the record; that such minute books be available but not introduced in evidence.

Thereupon, Arthur W. Braas was called upon as a witness in behalf of Plaintiff, was duly sworn, and testified as follows:

ARTHUR W. BRAAS

Direct Examination

By Mr. Howland:

I am secretary of Braas & Kuhn, Incorporated, and have held the office for about twenty years. As such secretary, I have custody and access to the records and files of the corporation. I have caused a diligent search and find no matters referred to in paragraph 6 of the subpoena.

United States Exhibit No. 49 for identification, which I have produced, represents membership dues for Cabinet Manufacturers Institute at \$1 per month and comes from one of the books of original entry and the entries contained were made in the regular court of business. I have no other record of similar payments to any of the other individuals of the organizations named in paragraph 7.

Cross-Examination

By Mr. Faulkner:

So far as I know, my company has never made a power of attorney, or given any person authorization to negotiate or execute any contracts or agreements relating to wages and hours and working conditions, during the period January 1, 1935, to June 26, 1940. Neither have we authorized in writing or given the power of attorney to negotiate or execute

(Testimony of Arthur W. Braas.)

an agreement concerning the manufacture, fabrication, purchase or use of millwork [158] and pattern lumber concerning hours or working conditions regarding the manufacture, fabrication or use of millwork and pattern lumber. The printed card which I have produced (marked U. S. Exhibit No. 50 for identification) is the printed scale of wages, union hours and holidays. We have not paid to my knowledge, nor do our records show payment of any money to Lumber Products Association or any officer thereof or to Lumber Products Conference in San Francisco, Wood Products, Inc., East Bay Mill Owners Association, J. G. Ennes, Harry W. Gastjen, John Mullen, Oscar Ostlund or D. M. Edwards. The weekly payroll book shows the name of the employee, the amount he receives and the number of days and hours he works, and we have all the checks.

Thereupon, Frederick George Munk, Jr. was called upon as a witness in behalf of plaintiff, was duly sworn, and testified as follows:

FREDERICK GEORGE MUNK, JR.

Direct Examination

By Mr. Howland:

I hold the office of Vice-President of Fink & Schindler Company and have held that office since 1925. I have custody and access of records and books of that corporation, and have the books, papers and correspondence called for by the subpoena. We have not, to my knowledge, given

(Testimony of Frederick George Munk, Jr.)
power of attorney or other written authorizations called for under paragraph 4 of the subpoena. I caused a search to be made of the records under my control and found none.

United States Exhibit No. 51 for identification is a contract on wage scales. It was received by the corporation in due course of business—probably by mail, and is wholly printed. It came from the District Council of Carpenters.

Paper marked No. 52 is an agreement of working conditions and, I should say, is a paper which was received in the usual course of business. I cannot say offhand from whom it was received. The letter is from the Bay Counties District Council, I [159] imagine. The rubber stamp mark that appears at the bottom of the page is a stamp used by my company.

Exhibit 53 was received in the due course of business. Exhibit 54 is a typed memorandum as to the payment of wages fixed by the arbitration effective next pay day, and was received in due course of business, probably from the Building Trades Council, again, through the arbitration board, because at that time there was an arbitration board.

Exhibits 55 and 56 probably came to my possession by mail and are entitled "Working Conditions of Carpenters," "Working Conditions for Millmen and Cabinet Makers."

The papers just produced are all the papers in the possession of the corporation in response to paragraph 5 of the subpoena.

(Testimony of Frederick George Munk, Jr.)

Papers marked Exhibit 57 comprise letters received by, and copies of letters sent by the corporation in due course of business, and are all the papers called for by paragraph 6.

Exhibit 58 are ledger sheets of original entry, comprising all the transactions with the concerns named at the top of them. Entries contained were made in the regular course of business. Entries on the disbursement sheet would be dues and other expenses paid to the associations named on the paper, and the dates indicated. Page out of a journal of notes and trade acceptances shows a disbursement to Mr. J. P. Ennes which was a private transaction showing payment for some stock Mr. Ennes formerly held in our company when he was a member of our company. The transaction did not in any way concern the activities or business of Cabinet Manufacturers Institute.

Document marked U. S. Exhibit No. 59 for identification is bookkeeping payroll from October 1936 to November 1, 1940, and comprises all the original records with regard to matters relating to payroll. [160]

Cross-Examination

By Mr. Faulkner:

Pursuant to the subpoena, I examined our files and produced the documents referred to.

By Mr. Tobriner:

I don't remember whether I received Exhibit 54 for identification from the Bay Counties District

(Testimony of Frederick George Munk, Jr.)

Council of Carpenters, or from San Francisco Building Trades and Construction Council. I could not answer whether there was anything received from the San Francisco Building Trades and Construction Council. As I understand it, our dealings were with the San Francisco carpenters which, I understand, are not San Francisco Carpenters and Construction Trades Council. I don't know off-hand where the memorandum came from. I believe that came from the Building Council, or through our Secretary, Mr. Ennes.

SIDNEY FISHER

called as a witness in behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Howland:

I hold the position of Secretary of L. & E. Emanuel, Incorporated, and have been secretary since some time in 1938, I believe. The books, documents and papers of the corporation are, to some extent, under my supervision. I have never seen a power of attorney for the corporation such as is referred to in paragraph 4 of the subpoena. I did not, personally, cause a search to be made. There was one made. As a result of the search such paper was not found to my knowledge. To the best of my knowledge, I have never seen any of the contracts

(Testimony of Sidney Fisher.)

or agreements called for in paragraph 5 of the subpoena. I don't know whether the company has them or not. This is the first time I have seen the subpoena. I came to work for the company in 1938 and since [161] my time there has not been any documents.

After colloquy between Court and council, there was

Cross-Examination

By Mr. Faulkner:

I have brought a pile of papers taken from the firm of L. & E. Emanuel, pursuant to subpoena served. I am familiar with the folder only to the extent of the names and things that were written or originated in our concern, or received by them. They were taken from the files by the bookkeeper who went through the files and selected the various papers produced.

Thereupon, plaintiff called upon Mangrum, Holbrook & Elkus to respond to the subpoena and, by stipulation, Mr. Bacigalupi produced certain records and identified them by statement as follows: it was stated by Mr. Bacigalupi that for said defendant he had personally caused a search of the company's records to be made and that he had everything available which would conform to the subpoena. That there were no powers of attorney, authorizations or contracts as described in the subpoena.

Thereupon, folders of correspondence were marked U. S. Exhibits Nos. 60 and 61 for identi-

(Testimony of Sidney Fisher.)

fication and it was stated that the correspondence, both outgoing and incoming, was in due course of business to and from the persons named. That certain notations with regard to the adjustment of wages in correspondence which reflected wage rates and hours and conditions, were communications in due course of business. That the ledger sheet showing payments to the Cabinet Makers' Institute supported by actual bills rendered, shows payments at times of a dollar a month for the so-called associate membership, or Class B membership. The sheet marked at the top "A" is one of the original sheets from a book of original entry. This was before July 2, 1937. The company was formed on July 2, 1937. It is in no sense a successor of Mangrum & Holbrook & Company though it took over its business. [162] They purchased the assets and the new company was formed. The old concern was also a corporation.

Thereupon, folder containing correspondence and records just referred to was marked U. S. Exhibit No. 62 for identification. The pay-roll records showing payments to union employees will be produced. The search revealed no correspondence or papers relating to joint meetings as described in paragraph 8 of the subpoena.

ROLAND J. PLATO

called as a witness in behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Howland:

I was Recording Secretary of Millmen's Union No. 42 from November 1935 to about April 1938, during which time my duties were to note the minutes of the regular meetings of the Union, which I did in the regular course of business. For the particular period, stated I noted the minutes in my own handwriting in the four books marked for identification Exhibits 6, 7, 8 and 9, and they constitute a true record of each proceeding I witnessed.

ARTHUR SMYTHURST

called as a witness in behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Howland:

I held the office of Recording Secretary of Millmen's Union No. 42 from April 19 to July 5, 1938, and my duties were to take the minutes of the meetings of Local 42. The minutes in the four books marked for identification Exhibits 6, 7, 8 and 9, with reference to the period between April and June, 1938 are in my handwriting and I, personally, prepared the notes of the meetings that I attended, and prepared the minutes in the regular course of my duties. [163]

RODNEY O'HARE

called as a witness in behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Howland:

Since 1935, I was Recording Secretary of Millmen's Union No. 550, and later was Financial Secretary. I think I was Recording Secretary in December, 1936. During the time I was Recording Secretary my duties were to write the minutes of the meetings of the Local. The entries in Exhibits 18, 19, 20 and 21 for identification during the period from March, 1935 to November, 1936, are in my handwriting, and are minutes of meetings which I attended and proceedings which I witnessed. I prepared the minutes in the regular course of my duties as Recording Secretary.

T. H. BENNETT

called as a witness in behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Howland:

I was Recording Secretary of Millmen's Union No. 550, I believe, from December, 1936 until July, 1940, and my duties were to record the proceedings of the meetings of the Union. The entries in the four books marked Exhibits 18, 19, 20 and 21 for

(Testimony of T. H. Bennett.)

identification, between November 1936 and June, 1940, are in my handwriting and constitute the minutes of the meetings of the Union at which I was in attendance. They were prepared in the regular course of my duties.

ALEXANDER WATCHMAN

called as a witness in behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Burdell: [164]

I am President of the San Francisco Building Trades Council and have been since 1937. The Building Trades Council is organized under a charter granted by the Building Trades Department of the American Federation of Labor, and includes delegates from all organizations in the building industry, including Millmen's Local No. 42 and all carpenter unions in San Francisco. The organization is governed by by-laws and constitution of the Building Trades Department of the American Federation of Labor and its policy is established by the Building Trades Department of the American Federation of Labor. The officers of San Francisco Building Trades Council are, myself as President, Jason D. Brown, Recording Secretary, John Smith, Secretary-Treasurer, Mr. Galloway, Warden, James

(Testimony of Alexander Watchman.)

Ricketts is the business representative. His duties are laid down by the Council and are to adjust any difficulties that may arise between the various organizations of the Council and the employers. He makes regular oral reports to the delegates of the Council, which are not recorded. As President, I delegate to Mr. Ricketts most of his work; and where an agreement exists between employers and employees, I have instructed Mr. Ricketts to see that they complied with their agreements. That includes agreements and contracts of Local 42, and, all told, 52 local unions. I know that as business agent of Local 42 he would call for the assistance of Mr. Ricketts if the assistance was desired.

Documents marked Exhibit No. 63 for identification are copies of the official minutes of the Building Trades Council, covering various meetings from January, 1936 to June 27, 1940. Exhibit No. 64 for identification is documents of the Council from its files.

Documents marked U. S. Exhibit No. 65 for identification, is an accurate copy of the constitution and by-laws of San Francisco Building and Construction Trades Council taken from the files: [165]

Cross-Examination

By Mr. Tobriner:

I found no original contract or agreement as described in the subpoena, and I do not have such contracts or agreements, or know of their exist-

(Testimony of Alexander Watchman.)

ence. I never gave instructions to Mr. Ricketts to enforce such a contract. The San Francisco Building and Trades Council operates under charter from the American Federation of Labor's Building Trades Department and is governed by their rules, laws and regulations. The District Council of Carpenters operates under the constitution of the United Brotherhood of Carpenters and Joiners of America. Where two or more local unions exist it is mandatory on carpenters to form a district council of their own. The Bay District Council of Carpenters comprises four counties, Marin, Alameda, San Mateo and San Francisco. The Building Trades Council has jurisdiction only over San Francisco. It takes no part in any agreement between employees and employers unless called upon to assist. The Building Trades Council had nothing to do with the contract of Local 42. It is the duty of the local unions of the United Brotherhood of Carpenters to become a part and parcel of the Building Trades Council. The United Brotherhood of Carpenters has a membership of over four hundred thousand, is the second largest organization in the American Federation of Labor, and the President is the First Vice-President of the American Federation of Labor. As President of the local council I am entirely governed by the constitution and by-laws of the Building Trades Department of the American Federation of Labor. The Local constitution was drawn up largely for

(Testimony of Alexander Watchman.)

economy. The constitution in the green book would govern, which is No. 65 for identification. Each local union affiliated with Building Trades Council has local autonomy and can get together with its employers and make an agreement. Building Trades Council does nothing about it, but [166] if they make an agreement it is always the purpose, if possible, to carry that agreement into effect. The constitution sets forth, on page 22, the procedure to be followed by the Building and Trades Council to become a party to such agreement. Such procedure was not taken with respect to the contract or agreement alluded to by Mr. Burdell. I don't recall telling Mr. Ricketts, the business representative, to enforce that contract and did not instruct or authorize Mr. Ricketts to enforce it.

Cross-Examination

By Mr. Rontzohn:

I have been a member of the Building Trades Council so long that I really can't recall. I am a member of the Carpenters Union since 1909. I have always carried a card in the Carpenters Union and been either an officer or a delegate.

“Q. Were you familiar with the by-laws of the Building Trades Council and their trade rules as far back as 1920?”

“Mr. Burdell: I object to that.

“The Court: What is the purpose of it?”

“Mr. Rontzohn: The purpose is to ascertain

(Testimony of Alexander Watchman.)

what ~~the~~ rules were then with regard to what kind of work and so forth. It goes to the very contract in question in this case.

"The Court: Objection sustained.

"Mr. Routzohn: I take it—may I have an exception?

"The Court: Yes, you have an exception to every ruling.

"Mr. Routzohn: All right. May I state into the record what I want to prove?

"The Court: I don't think that is necessary, Judge. If that becomes necessary, you will have an opportunity to develop it later.

"Mr. Routzohn: I thought perhaps—they have asked the witness a number of questions as to his recollection of what took place and what the laws of the carpenters were and what the [167] Building Trades Council were, and I would like to have him tell us, I would like to ask him what the laws were of the Building Trades Council back in 1920 as reflecting upon the question of a conspiracy and what was incorporated in the contract there is here now.

"The Court: That is too remote. I cannot see how it can possibly have any materiality here.

"Mr. Routzohn: Well, if the same provisions—

"The Court: Pardon me. I don't care to hear any more about it.

"Mr. Routzohn: I would like to preserve the record by stating what I would like to prove. I can do it in a very short while.

(Testimony of Alexander Watchman.)

"The Court: You have already stated, it seems to me, sufficient to give me information as to how I should rule.

"Mr. Routzohn: All right, your Honor.

"The Court: You are going back to 1920. You want to show what the rules of the organization were in 1920. I can't possibly see how that has any connection.

"Mr. Routzohn: As refuting the theory of the Government that there was a conspiracy when the very same thing was in the rule book at that time.

"The Court: Let the ruling stand.

"Mr. Routzohn: Mark an exception there, please."

"Mr. Howland: Call Mr. J. G. Ennes as secretary of the Cabinet Manufacturers.

"Mr. Faulkner: May I have that read, your Honor?

(The statement of Mr. Howland was read by the reporter.)

"Mr. Faulkner: I assign as misconduct the action of the Attorney General in calling the name of an indicted defendant as a witness in this case.

"The Court: Is he an indicted defendant? [168]

"Mr. Howland: He is, your Honor.

"Mr. Faulkner: I ask the Court to instruct—

"The Court: You have made your assignment. I am not making any instruction at this time on

it. I will hear the rest of what you have to say.

"Mr. Faulkner: I ask the Court to instruct the jury at this time to disregard the statement of the Attorney General.

"The Court: I heard it. It is in the record. You are calling a man who is a defendant in this case, is that it?

"Mr. Howland: Yes. May I say, your Honor, we are calling him pursuant to a subpoena duces tecum which has been served upon him to produce certain books and papers of the corporation of which he is now an officer and of another association of which he was formerly an officer. We propose to have him produce those records and identify them in his official capacity with relation to, first, the corporation, and, second, the association. If counsel desires to object to this line we are prepared to argue the authorities for calling an indicted defendant for that purpose.

"The Court: Very well. If any other witnesses can be produced here who can give the same testimony, I would suggest that be done and that that witness be brought here.

"Mr. Howland: I may say, your Honor, that we have given a great deal of consideration to this problem and we see no way of getting production of these books and papers, we do not know the identity of any other individuals who could be compelled to produce them.

"The Court: Perhaps Mr. Faulkner would aid you.

"Mr. Faulkner: I assign every word Mr. Howland has said as misconduct, and ask the Court—

"The Court: Just a moment, counsel.

"Mr. Faulkner: Counsel knows he can't call— [169]

"The Court: Just a minute. Read the statement of the Court to Mr. Faulkner:

(Record read.)

"The Court: I just suggested to Mr. Faulkner that perhaps he could suggest a witness to you who could give the information that the Government is seeking and relieve the Court of this situation which has presented itself.

"Mr. Faulkner: Your Honor, I want to cooperate and intended to respond to your Honor. Before I did it, I did not want to forget to assign as misconduct what I considered was misconduct. We have the records of the Commercial Fixture and Store Front Institute. A subpoena was served in the form that it was—

"The Court: I want to know whether or not you are going to produce the records.

"Mr. Faulkner: Yes. We have them in court here.

"The Court: Now, if you wish the benefit of this assignment of misconduct you have made, of course, you have it, because you have made it quite clear.

"Mr. Faulkner: Very well.

"The Court: Your position.

"Mr. Faulkner: Yes.

"The Court: Now, will you produce the witness?

"Mr. Faulkner: Yes, your Honor.

"The Court: Or the evidence.

"Mr. Faulkner: I will not produce the witness.

"The Court: What?

"Mr. Faulkner: I will not produce the witness unless the Court orders the witness to be sworn.

"The Court: Well, no, I don't mean the party whom you object to having sworn. I mean some other party.

"Mr. Faulkner: Your Honor, there was no other party. Every person who would be qualified is an indicted defendant. I [170] will produce the records. They have had the records. In other words, your Honor, you misunderstood my position. They have had these records and they have returned them. They are available to the Government. The Government knows they are available, and that is why I objected to them calling Mr. Ennes as a witness.

"The Court: All right.

"Mr. Faulkner: Mr. Howland knows the records are available.

"The Court: Mr. Howland, will you accept the offer of Mr. Faulkner?

"Mr. Howland: Provided he will produce the records called for by the subpoena and stipulate as to their authenticity.

"Mr. Faulkner: Well, I won't stipulate to the authenticity. I will produce the records of those

companies and everything has been produced and has been in the possession of the Government and it is not right to put a defendant in this position and I can give your Honor some authorities—

“The Court: I thought perhaps we could obviate some argument and some night reading, Mr. Faulkner. I thought perhaps, I might be selfish, but what I was trying to do, I was trying to relieve myself, but if you are going to insist on the proposition, I suppose I will have to direct counsel to furnish me with the points and authorities so I may look at them tonight and rule upon it tomorrow morning.”

“Mr. Faulkner: Very well, your Honor.”

“The Court: The objection of Mr. Faulkner to the swearing of a certain person who is a defendant in the case is over-ruled. The citation that the United States Attorney is guilty of misconduct is without merit. The request that the jury be instructed by the Court in that regard is denied.

“Mr. Faulkner: Exception. [171]

“Mr. Howland: Call Mr. J. G. Ennes, Secretary of the Cabinet Manufacturers Institute, of California, Northern Division.

“Mr. Faulkner: As part of the record, I would like the record to show by stipulation that no subpoena has been served on this witness, and he was called from the body of the court-room by the Attorney General.”

"The Court: Is that so?"

"Mr. Howland: A subpoena was served but not in any official capacity. There was a subpoena served on J. G. Ennes.

Mr. Faulkner: You know as a fact he was served in the court-room, and he has been called in this case from the body of the court-room."

"J. G. ENNES

"called for the United States; sworn.

"The Court: As I understand it, this witness has not been sworn ad testificandum, but he is sworn merely for the purpose of identifying some books or documents, is that right?"

"Mr. Howland: That is correct. The Government is desirous of having him produce records of this corporation or association, and as I stated yesterday we stand ready and willing to have those documents produced and identified by another witness that the defense is ready, and able to produce instead of this defendant.

"Mr. Faulkner: After the position the Government has taken in swearing the witness, the other is merely a gratuitous statement."

"Mr. Howland: I have not made a statement yet.

"The Court: You may proceed.

"Mr. Faulkner: So that the record may be clear, so that I will not have to interrupt by ob-

(Testimony of J. G. Ennes.)

jection, it is the position of the Attorney General's Office at this time that in addition to asking for documents of the corporation that they propose to ex- [172] amine this witness on something other than the corporation.

"The Court: If that is done you may interpose your objection.

"Mr. Howland: Q. Mr. Ennes, during the period of the active existence of the Cabinet Manufacturers Institute of California, Northern Division, did you have custody and charge of the records and files of that Association?

"A. Yes.

"Mr. Faulkner: Just a minute, I object to that as a direct violation of the rule of the Court, which was that this witness could be called to this stand for the purpose of identifying corporate records.

"The Court: He can state whether or not he has custody.

"Mr. Faulkner: It is not a corporation, your Honor.

"The Court: What is it, an association?

"Mr. Howland: It is an unincorporated association, and it is the position of the Government that that was a person within the meaning of the Sherman Act, as amended by the Clayton Act.

"Mr. Faulkner: My position is that it is clearly indicated by the authorities that I gave your Honor last night and the case cited by the Government

(Testimony of J. G. Ennes.)

is clearly to the effect that a witness can be called in a case to supply the authenticity which would flow from a corporate seal.

"The Court: Objection overruled.

"Mr. Faulkner: Exceptions."

I cannot produce the articles of association and files of the association called for by paragraph 1 of the subpoena. I would say they are not in existence. I cannot produce the minute book referred to in paragraph 2 of the subpoena and would say they are not in existence. I make this statement of my own knowledge. I cannot produce the records and books of the [173] association sufficient to show the names of the members. They are not in existence. I cannot produce the books and records of the association to show all sources and items of income. They are not in existence. I cannot produce any powers of attorney or other written authorizations to the association to do any of the acts set forth in paragraph 5 of the subpoena. Such records are not in existence. I cannot produce contracts or agreements proposed or executed between said association and any of the associations and individuals set forth in paragraph 6 of the subpoena. Such records are not in existence. I cannot produce any correspondence or communications referred to in paragraph 7 of the subpoena. Would say they are not in existence. I cannot produce any minute book or paper relating to joint meetings referred to in paragraph 8

(Testimony of J. G. Ennes.)

of the subpoena. Such records are not in existence.

I am Secretary of the Commercial Fixture and Store Front Institute and have charge and custody of its files, books and records.

U. S. Exhibit No. 67 for identification contains the minutes, by-laws and signatures of the members of Commercial Fixture and Store Front Institute. I thought the articles of incorporation were there. I don't know where they are. The minute books describing meetings of stockholders and directors are in the book already marked.

U. S. Exhibit No. 68 for identification (photostatic copy used by stipulation) are accounts of Commercial Fixture and Store Front Institute and are original books of entry made in the regular course of business. There are not in existence any powers of attorney or other written authorizations as described in paragraph 14 of the subpoena.

U. S. Exhibit No. 69 for identification is a photostatic copy of employer and employee agreement on wages and hours and working conditions re Mill and Cabinet work, with the Commercial [174] Fixture and Store Front Institute and is a part of its records. That is all the contracts or agreements I have, called for by paragraph 15 of the subpoena. There are no letters such as referred to in paragraph 16 of the subpoena in existence.

Book marked Exhibit 70 for identification is a part of the records of Commercial Fixture and

(Testimony of J. G. Ennes.)

Store Front Institute and is the neostyled copy of arbitration proceedings in connection with a labor proceeding. Commercial Fixture and Store Front Institute was not a party to the proceedings. When I became secretary I brought it along with me.

The four envelopes marked Exhibit 71 for identification contain cancelled checks of Commercial Fixture and Store Front Institute, covering disbursements recorded in the ledger sheets, made by the corporation in due course of business.

U. S. Exhibit No. 72 for identification is bank deposit book of Commercial Fixture and Store Front Institute. I have not the predecessor book. Exhibit No. 73 for identification is an agreement between Cabinet Manufacturers Institute of California, Northern Division, and Bay Counties District Council of Carpenters, and is a record I carried with me when I became secretary of Commercial Fixture and Store Front Institute, and is now a part of its records.

Thereupon, through Mr. Bacigalupi, attorney for defendant, Mangrum, Holbrook & Elkus, Exhibits Nos. 74 to 80 were identified as envelopes consisting of original checks and payroll sheets through the period covered by the subpoena.

JOHN G. MILLER

called as a witness in behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Howland: [175]

I am office manager of Mullen Manufacturing Company and have been for approximately fifteen years, and as such have custody and access to the books and records of the company. I am here pursuant to subpoena duces tecum served upon the company. I have a copy of the subpoena with me. No power of attorney or other written authorization can be found, such as are called for by paragraph 4 of the subpoena. We have no contracts or agreements between organizations and the Mullen Manufacturing Company directly, as referred to in paragraph 5 of the subpoena.

Sheets marked for identification No. 81 are bills for dues from Cabinet Manufacturers Association to Mullen Manufacturing Company, and were received by the company in due course of business. Sheets for identification Exhibit No. 82 are various matters of correspondence in the files, as communications between the various cited parties and Mullen Manufacturing Company. I don't think they were written by myself. Papers purporting to be original letters received were received in due course of business. Sheets which purport to be carbon copies of outgoing letters were sent in due course of business.

Paper marked Exhibit No. 83 purports to be a

(Testimony of John G. Miller.)

copy of an agreement between United Brotherhood of Carpenters and Joiners and various manufacturers in regard to wages, hours and labor conditions. I am not able to tell how it came into the possession of my company. It was given to me to keep as a record and be available for reference when required. I have been requested by executive officers to produce the paper for inspection and use. I used it myself and it was continually in use. There were subsequent papers. One is marked on the back in my pencil handwriting as being valid up to a certain time. I referred to this paper from time to time for the purpose—well, here is a question—for the purpose of the apprentice scale.

Sheets marked U. S. Exhibits No. 84 for identification [176] are accounts payable — transfers from the journal—sheets from the general ledger book—made in the regular course of business.

Five books marked U. S. Exhibits Nos. 85 to 89 constitute the original weekly payroll records, personally prepared by me. I only used so much of the contents of the paper marked 83 as a reference is concerned. It is part of my duty to know what a man gets. I don't know whether Exhibit 83 has been modified or not. The rate is so uniform between union men and employers that, except in a case of apprentice, there is no necessity for reference. There is a schedule that applies to all journeymen in certain vocations, and the

(Testimony of John G. Miller.)

books are divided into vocations and there is no necessity to refer to that, as it is part of our daily routine. The purpose of the dates set out on the paper would be to show a change of audit, rate of pay. I don't see any date on this to find out when these rates went into effect. It says this agreement is entered into, etc., and minimum wage scales shall be so much. This was modified by some other proceeding which I believe we had copy of. We received from all sorts of sources that the wage scale is \$8.50 for one vocation and \$11 for another. That is general information known as well as we know that noon is noon. Lately we have advanced carpenters from \$10 to \$11. I have seen no agreement although it is in force. The date of the paper is May 1, 1939 to May 1, 1940. I first started using the paper for the purpose described, approximately the first of 1939. The pencil notation on the back of the paper was made when one of the officials of the labor union called and said that is the thing we are working under, and I put the memorandum date 2-20-41 to show it was in effect, for my own satisfaction. Date of notice was then corrected by counsel to show 2-14-40 and then 2-20-41.

I do not have in the file a paper of the same general nature to which reference was made prior to this paper. Papers [177] that were previous to that I think I destroyed. I think I had a paper similar to this for the purpose of ascertain-

(Testimony of John G. Miller.)

ing the scale posted to payroll. I think those papers have come to us at intervals through a number of years. I could not say whether I got such a paper during the closing months of the year 1936. There have been from time to time similar papers used for posting the payroll.

I meant by saying that there was no "direct" contract, I put in the word "direct" because I don't know whether you would come back and tell me, "Here is one," because we recognize it in our payroll set-up, and that is a copy of some sort of a contract.

Cross-Examination

By Mr. Faulkner:

I have produced the sheets from the ledger, under paragraph 7 of the subpoena wherein I was requested to bring disbursement books, ledgers and records showing monetary disbursements. I have no record of any disbursements to Lumber Products Association or any officer or agent thereof, nor Wood Products, Inc. or any officer, or East Bay Mill Owners Association or any officer.

"Q. J. G. Ennes, Oscar H. Ostlund, John Mullen—you have disbursements for Mr. Mullen, but other than Mr. Mullen, J. G. Ennes, and Leo Roselyn, did you make any disbursements to any of those men?"

"A. You are speaking of those men, personally?"

"Q. Yes. A. None."

(Testimony of John G. Miller.)

Redirect Examination

By Mr. Howland:

Ledger sheets marked 74 contain records of payments to Cabinet Manufacturers Association and to Commercial Fixtures.

EDITH FINCH

called as a witness in behalf of plaintiff, was duly sworn and testified as follows: [178]

Direct Examination

By Mr. Howland:

I am bookkeeper of L. and E. Emanuel, Inc. I have been for not quite two years, and have the custody and control of the books and records of the Company. I have no powers of attorney or other written authorizations such as are called for in paragraph 4 of the subpoena. I don't know whether such records are in existence. I have made or caused to be made a search of the files for the purpose of producing all the records that are called for by the subpoena. I have no contracts or agreements made by the company which are called for by paragraph 5. There are no such contracts in existence. The only correspondence we have, called for by the subpoena, is with Cabinet Manufacturers and with the Council of Carpenters.

(Testimony of Edith Finch.)

Folders marked U. S. Exhibits Nos. 90, 91, 92 and 93 are records of the Company consisting of correspondence with Cabinet Manufacturers and Council of Carpenters. Papers purporting to be original letters received by the Company are letters received in due course of business. Papers purporting to be carbon copies of outgoing letters were actually sent by the Company in due course of business.

Folders marked U. S. Exhibits Nos. 94, 95 and 96 are letters received by us from the District Council of Carpenters. U. S. Exhibit No. 97 for identification contains entries in the regular course of business and shows accounts payable with the Commercial Fixture and Store Front Institute. The first entry was made March 1, 1938. I have no record of any payment made prior to that time. I have no minutes or papers relating to joint meetings as called for in paragraph 8 of the subpoena.

Exhibit No. 98 for identification contains the regular payroll record for the period the book purports to cover and the entries were made in the regular course of business. Bundle of [179] papers marked U. S. Exhibit No. 99 for identification are copies of indifical records of every man who has worked for us. Original payroll records have been destroyed until 1939. We got the Social Security to reinstate that record as far as we could.

(Testimony of Edith Finch.)

Cross-Examination

By Mr. Faulkner:

I did not read the contents of the various folders. The papers were received in the regular course of business and went into the bundles, whatever it may be. Payroll record is non-existent.

“Mr. Faulkner: You say the payroll record is nonexistent for what period, Miss Finch?”

A. June, 1939, it starts, and it goes to 1940.

Q. Is that record reestablished—

A. Yes.

Q. —by these? A. Yes.”

LEE MOFFETT

called as a witness in behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Burdell:

I am a lumber inspector for Western Pine Association. I have been with Western Pine about seven and a half years. About four and a half of that have been spent as an inspector and about three years as promotional field representative, which took me through many States. Western Pine Association is a non-profit organization maintained by the pine sawmills in the Western States. Business of the members of the association mainly is the production of lumber, manufacture of pine

(Testimony of Lee Moffett.)

lumber. Most of them produce millwork. I was located in San Francisco as promotional representative for the association from about July, 1937 until April, 1938. As field representative in the promotion department my duties called for an exhibit at various home shows and we built [180] a model home at the Exposition. I also called on architects and local millwork houses and retail yards and school boards, anyone connected with the use of lumber in the Northern California district. From time to time I received specific instructions from our home office in Portland to look into certain things that might be of interest to our industry. Our main interest was the use of wood and pine in particular and, of course, we were more or less interested in various restrictions against the use of our product. I tried to and did follow my instructions as closely as possible.

I know Mr. D. N. Edwards. I met him twice, I believe. I met him first in Oakland, as I recall it, in September, 1937, and had a conversation with him at that time.

"Mr. Routzolin: We object, your Honor, as incompetent.

"Mr. Burdell: Mr. Edwards is a defendant, your Honor.

"Q. Did you have a conversation with Mr. Edwards at that time?

"A. Yes, I did.

"Q. What was the subject matter of the conversation?

(Testimony of Lee Moffett.)

"Mr. Routzohn: We object, if your Honor please—

"The Court: Overruled.

"Mr. Routzohn: In the first place, that calls for a conclusion; what was the subject matter.

"The Court: What was said between you?

"Mr. Routzohn: We object to that.

"The Court: Overruled.

"Mr. Faulkner: My objection is more than that stated by Judge Routzohn. We object on the ground it is incompetent, irrelevant and immaterial, and not binding upon the defendant here on trial, and no foundation laid, in this, that there is no evidence in this case that a conspiracy of any kind, character or description existed between the witness on the stand and any defendant in this case, nor is there any showing of any nature [181] in this case that the relation of Mr. Edwards was such that a conversation with this witness could be introduced other than hearsay as to these defendants.

"The Court: Does anybody wish to add anything?

"Mr. Tobriner: I wish to object on the further ground that there is no statement of the place where the conversation occurred, the time, or the parties present.

"The Court: Any further objections from anybody? Overruled.

"Mr. Faulkner: Exception. Your Honor, I presume—

(Testimony of Lee Moffett.)

"The Court: It goes to all the defendants, it is understood.

"Mr. Faulkner: Yes.

"The Court: It was understood in the beginning. It is still the understanding, isn't it?

"Mr. Routzohn: I presume so, your Honor."

We discussed the use and distribution of lumber in the Bay area. I introduced myself as a representative of the Western Pine. Mr. Edwards took me through his plant and showed me his operations—his various machines. During that trip around the plant, he described his operations and brought up the subject of competition from the sawmills in regard to his business. He was manager of the Oakland Planing Mill at that time and he brought up the competition and he was more or less antagonistic toward the fact that sawmills were shipping lumber into the Bay area. I don't recall the exact words. I couldn't repeat exactly what he said, because that happened some time ago, but I recall the substance to a certain extent. The subject was the discussion of competition between the Bay district planing mills and sawmills in the Northwest.

"Q. What did Mr. Edwards say about that?

"Mr. Routzohn: We object on the ground that it is [182] incompetent, irrelevant and immaterial what he may have said about competition.

"The Court: Overruled.

"Mr. Routzohn: From the sawmills in the Northwest.

(Testimony of Lee Moffett.)

"The Court: Overruled.

"Mr. Routzohn: We object because it is not binding on any of our defendants unless a conspiracy is shown and there has been no conspiracy shown.

"The Court: A conspiracy will have to be shown or it won't be binding on anybody.

"Mr. Burdell: It is offered subject to that connection, your Honor.

"The Court: I understand that. Have you fully answered the question? Read the question."

He said he was opposed to the sawmills shipping certain items into the Bay area. I didn't say very much of anything, because I was listening. I recall just the substance of his statement. I couldn't repeat words, but at that time his plant was rather quiet and we mentioned that, and he said that that was the reason that there was slack business in the Bay district, because the sawmills were shipping lumber in here in competition such that they could not compete with it locally. At that meeting that seems about all that was discussed.

I met Mr. Edwards again a week or two later in the Ray Building in Oakland. Besides us, there was one other gentleman there. I believe he was secretary of the Retail Dealers' Association. I met Mr. Edwards in this gentleman's office.

"Q. What was said at that meeting, Mr. Moffett, by you and by Mr. Edwards in substance?

"Mr. Faulkner: The same objection, your Honor, as to the last conversation.

(Testimony of Lee Moffett.)

"The Court: Overruled." [183]

Mr. Edwards took me into his private office and we talked a while, and he explained the reason for having this office as well as an office at his place of business which was the Oakland Planing Mill, and he told me the reason he maintained this office in the Ray Building was it was a place to negotiate with the various unions and their officials, and maintain relations with his association of Millwork Operators. He told me the nature of these negotiations that they had this association of Millwork Operators and were in a position to negotiate with the unions and receive certain concessions in return for their promise of obtaining more work for the local millmen; that by excluding certain items of lumber from the sawmills they would be in a position to hire more men in the Bay district, and the object of his office in the building was to control these various restrictions and to contact and negotiate with the union officials. He said that it had been quite successful and that he expected in a short time they would be able to extend these restrictions to cover all items of millwork, also surfaced lumber and molding, knotty pine paneling and items of that nature, would not—other items are excluded from coming into the Bay district from the sawmills. By sawmills, I mean those plants located in the various Western States that log and saw it into lumber and eventually ship it as a finished product. They do not only handle

(Testimony of Lee Moffett.)

rough lumber, many are equipped to ship the finished product, such as finished boards and moldings and millwork, doors and windows, knotty pine paneling,—all items of the finished product ready to be used by the carpenter. These visits were just

in connection with a small part of my duties. After my conversation with Mr. Edwards, I visited a number of lumber yards and mills in Oakland or San Francisco, and observed lumber or millwork.

“Q. Did you observe any lumber or millwork at any of them? A. Yes.

“Q. Tell the jury what you observed. [184]

“Mr. Routzohn: I object, if the Court please, for the reason it is not competent, it is not material and it is irrelevant and has no bearing whatsoever on this case.

“The Court: Overruled.

“Mr. Faulkner: On the further ground that the acts and conduct of this witness is hearsay as to the defendants and not binding upon them.

“The Court: Overruled.

“A. Well, my contacts were mainly with lumber yards and millwork houses, it was just to discuss various phases of the lumber industry.

“Mr. Routzohn: We ask that go out.

“The Court: That may go out. Read the question.

“Mr. Burdell: Q. Tell the jury what you observed, Mr. Moffett.

A. Well, that is mainly what I did observe

(Testimony of Lee Moffett.)

around the lumber yards, was the lumber products of the various types of millwork and lumber.

"Q. Did you see lumber stacked at any of the yards or at any particular yard?

"Mr. Faulkner: Same objection.

"The Court: Overruled.

"A. Stacked? I don't quite get the question, 'stacked.' "

"Mr. Burdell: Q. Did you see any lumber with any signs upon it at any yard?

"Mr. Routzohn: We object as leading.

"The Court: Overruled. It is leading. Overruled.

"The Witness: You mean from the sawmills, lumber from the——

"Mr. Burdell: Q. At what yard, Mr. Moffett?

"Mr. Routzohn: Your Honor, in answering if he is telling——

"The Court: Well, if you will keep still with your [185] objections, perhaps we will be able to get started in the answering of the question. If there are any objections you have to make now, if you will all make them one after the other and we may have a stipulation——

"Mr. Faulkner: We haven't repeated objections. We have merely added to it.

"The Court: Of course, if you do not wish to do that, I presume you can make them from time to time. Read the question, please.

(Question read.)

(Testimony of Lee Moffett.)

"A. Yes, I observed some lumber with signs.

"The Court: Well, tell the jury what you saw.

You said you saw lumber with signs.

"A. Yes, I saw some lumber bearing various signs, some lumber that I recall in part had a sign of 'Hot Cargo' on it. It was a boxcar full of lumber from one of our mills in the Northwest and had been shipped in here and unloading had been delayed because of the sign attached to it. I also saw 'Hot Cargo' on it. The lumber remained there for some time before it was unloaded.

"Mr. Routzohn: We ask the latter part of the answer be stricken out, your Honor.

"The Court: Denied.

"Mr. Routzohn: As being a conclusion.

"The Court: Denied."

I examined the car and determined it contained largely what is known as shop lumber which is used in the manufacture of doors and windows. It is not a completed product. It is a surfaced board used to manufacture these items of millwork. Probably 90 per cent of the car contained that type of lumber, possibly 10 per cent contained the manufactured items of moldings. These moldings were placed in the car on top of the shop lumber and that was the cause of the objection. It was the inclusion [186] in this car of the manufactured molding lumber. I looked at the lumber and it did not have a union label on any of it. I re-

(Testimony of Lee Moffett.)

turned to the yard possibly three weeks later to determine whether or not the lumber had been moved. I didn't return again. The last time I saw it it was still unloaded. I saw it twice,—the sign was on it both times. The inside of the car remained in the same condition as it was in the first time I saw it.

Cross-Examination

By Mr. Routzohn:

I have no permanent address because I am on the road all the time for the Association. I spent approximately eight and one-half months in the last several years in this portion of the State of California. Part time in San Francisco. I have not resided in San Francisco since 1937, except a day now and then when I come on regular work. Perhaps four months out of the eight and one-half months of 1937 was spent in San Francisco. When I complete my testimony I will proceed to LaGrande, Oregon, to continue my regular work of visiting mills. I visit all the pinemills, which requires about a year's time. Part of the time I will spend in the East as an inspector of lumber on the Atlantic Coast. There are approximately 140 mills represented by Western Pine Association. I do not have a list of them but could probably obtain it in two hours' time. I think I could obtain one at one of the member's mills office in San Francisco. The name of the lumber yard where I saw a car marked "Hot Cargo" as I recall

(Testimony of Lee Moffett.)

was Engstrom Lumber Company, in Oakland. I do not recall the street address. I saw it some time in the fall of 1937, probably in the latter part of September or the first of October. I saw the particular car very close to the time of the conversations in September of 1937. I understood by the term "Hot Cargo" that it could not be unloaded because it did not come from a member mill which did not carry a union label. It had the words "HOT CARGO." I understood [187] by the word "HOT CARGO" marked on that car, that the shipment came from some mill that did not bear the Union Label of the United Brotherhood of Carpenters and Joiners of America. I don't know definitely what mill it came from. It was none of my business. Possibly, it was one of our mills. Most are members of the Western Pine Association. I had no way of finding out either the consignee or consignor, and made no attempt to ascertain. I did not get involved in anything that really was not any of my business. At that time I do not believe that any of the sawmills belonged to either union. I mean that they neither belonged to the C. I. O. or A. F. of L. Carpenters and Joiners of America. I mean they had not been organized yet as far as those two labor organizations are concerned. Possibly, this mill had a company union. Some of the mills have their own union. I don't know whether this lumber was shipped from a mill that had a company union. I did not

(Testimony of Lee Moffett.)

ascertain why that was designated "Hot Cargo," other than my own knowledge that it was non-union material. The car was on the siding right near the planing mill of the Engström Lumber Company. It was either October or September, 1937. I did not communicate with the mill that shipped the particular car. I went back three weeks later, because my duties as a representative for the association called for my travelling from one yard to another. Finding something like that did not impress itself upon me sufficiently to make a notation and then take some action of my own in connection with it.

Cross-Examination

By Mr. Faulkner:

My visit to certain lumber yards and mills in Alameda County was in 1937 and part of 1938. There are many mills in this territory, I cannot recall many of them I visited, because that was some time ago and I have been many places since then and visited many mills. I recall the E. K. Wood Lumber Company, [188] Tilden Lumber Company, Pacific Manufacturing Company. They have a plant in Oakland, a distributing department. Hogan, Oakland Planing Mill, Zenith Lumber and Mill works. That is about all that I recall the names of at the present time. I visited certain lumber yards and planing mills in San Francisco during the same period, from July, 1937 to April,

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(Testimony of Lee Moffett.)

1938. I visited in San Francisco the Eureka Planing Mill, the Acme and the Brannan Street Planing Mill—that is about all I can recall.

Redirect Examination

By Mr. Burdell:

I recall visiting the Pyramid Lumber Company and Oakland Planing Mill, in Oakland.

Mr. Moffett was thereupon excused to return with the list referred to in his testimony.

ARTHUR W. BRAAS

recalled for the plaintiff.

Direct Examination

By Mr. Howland:

In addition to the records already produced, book marked for identification 100 is original payroll record containing the entries made in the regular course of business, showing weekly hours worked and amount of wages. Book marked 101 for identification is the same thing for 1940 up to date, 1941, beginning where Exhibit No. 100 leaves off. The two form a continuous record, and the entries in 101 were likewise made in the regular course of business.

CHARLES R. GURNEY

called as a witness in behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Howland:

I hold the office of Secretary-Treasurer in Alameda [189] County Building & Construction Trades Council. I have held that office approximately 25 years and have custody and charge of the books and records of the Council. U. S. Exhibit No. 102 for identification is a copy of the charter of the Council. Booklet marked Exhibit No. 103 for identification is the constitution and by-laws. U. S. Exhibit No. 104 for identification is a true and accurate mimeographed copy of the minutes prepared by me in the regular course of my duties, recording proceedings and occurrences I have witnessed. There are no contracts referred to in paragraph 3 of the subpoena. U. S. Exhibit No. 105 for identification is a communication from Millmen's Union No. 550 received by the Council. Folders marked 106 and 107 contain minutes of the San Francisco Building & Construction Trades Council, received by us, weekly. I have no letters of San Francisco Building Trades Council coming within the scope of the subpoena.

Charles Roe is assistant business agent of the Council and has occupied that office approximately three years. J. C. Reynolds is business agent.

"Mr. Todd: I believe we have the benefit of the objections made by previous defendants, so it will

(Testimony of Charles R. Gurney.)

not be necessary for me to repeat them, your Honor?

"The Court: Yes."

I am familiar with Mr. Roe's duties. He is part representative of Hayward Union of Carpenters and also assists Mr. Reynolds, business agent of the Council. Mr. Reynolds, the business agent, takes care of all the business of the Council, probably would have to interview contractors pertaining to future contracts. If there is any trouble over jurisdictional dispute he is sent by the Council to try and adjust the difference. He is authorized to participate in negotiations of any labor contract, if he is instructed by the Council. I could not recall any particular job the business agent has ever been so instructed. The last job [190] I can recall would be the Naval Air Base at Alameda, in which the contractor desired to meet the representative, relative to supplying labor. I don't know whether Mr. Roe has ever been instructed to assist the business agent and other officers of the local unions in the execution and performance of labor contracts. I couldn't say whether he has cooperated with and assisted those persons with respect to execution and performance of contracts.

LOUIS D. WINE

called as a witness in behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Zirpoli:

I am special agent for the Federal Bureau of Investigation and have acted as such approximately 17 years. I have been assigned to San Francisco field office approximately 4 years. I know J. Gordon Ennes. I believe he is sitting at the counsel table. I met him on or about April 6, 1940, in his office at 74 New Montgomery Street, San Francisco. Just he and I were present. We had a conversation. He told me he was secretary of Commercial Store Front and Fixture—Commercial Fixture and Store Front Institute.

The following evidence was offered against, and limited to, defendants Ennes and Commercial Fixture and Store Front Institute:

He told me he was secretary and manager. There were approximately 12 members, and he was bargaining agent with the union.

“A. I approached Mr. Ennes, introducing myself to him as a special agent of the Federal Bureau of Investigation. I presented my commission card, explained it to him, told him I was making an investigation of the millwork industry on behalf of the Government. I asked him about the Institute and asked him the number [191] of members. I asked him if he would give me a list of the membership.

(Testimony of Louis D. Wine.)

He said he hadn't that list available, but would mail it to me later. I asked him about a contract that was entered into on which his name appeared, and he had several contracts, and produced the contract, the 1938 contract, which was signed by him and a number of others. I showed him his signature on the contract. He identified it, admitted he had signed that. I asked him further about the clause in the contract relating to restrictive and permissible millwork in the San Francisco area. He said he didn't know of the existence of such a clause in the contract. I asked him if he had read the contract before he had signed it. He said, 'Not entirely.' I asked him if he knew if there was any agreement to restrict millwork coming into the San Francisco area. He said, 'No, not directly, only by hearsay and rumor.' I asked him what information he had. He said, 'Rumors and hearsay are not valuable.' I asked him if he knew the contents of the contract when he signed. He said only partially, he did not read it entirely. He said he was representing the Store Front Institute, the Company of which he was secretary at the time he signed this contract."

He explained his duties were to negotiate contracts of the Association and appear in negotiations with the Millmen's Unions and the Association. He attended numerous conferences between union groups as representative of the Association. He said the Institute was a California corporation com-

(Testimony of Louis D. Wine.)

posed of approximately 12 members. I left my name and address with him and subsequently received a list of the members through the mail.

U. S. Exhibit No. 108 was the letter so received and was thereupon introduced in evidence and read to the jury.

"Mr. Zirpoli: The letter is on the letterhead of Commercial Fixture and Store Front Institute, Inc., 74 New Montgomery Street, San Francisco, California; Telephone Exbrook [192] 6572.

"April 10, 1940:

"Federal Bureau of Investigation,
111 Sutter Street
San Francisco, California.

"Gentlemen:— Att: Mr. Wine

"Complying with your request, the members of this organization are:

Wm. Bateman, 1915 Bryant Street, San Francisco

Braas & Kuhn Co., 1917 Bryant Street, San Francisco

L. & E. Emanuel Inc., 2665 Jones Street, San Francisco

Exposition Woodworking Co., 661 Golden Gate Ave., San Francisco

The Fink & Schindler Co., 552 Brannan St., San Francisco

Ful-Vue Fixture Co., 75 Oak Grove, San Francisco

S. Kulcher & Co., 731 E. 10th St., Oakland

(Testimony of Louis D. Wipe.)

Mangrum, Holbrook & Elkus, Golden Gate Ave.

& Hyde Streets, San Francisco

Mullen Mfg. Co., 64 Rausch St., San Francisco

Ostlund & Johnson, 1901 Bryant St., San Francisco

H. Schultze & Son, 49 Rodgers St., San Francisco

Unit Bilt Fix. Co., 243 7th St., San Francisco

"The Commercial Fixture and Store Front Institute is incorporated—January 17, 1939, State of California. The officers are:

"Mr. John Mullen, Director and President

Mr. Oscar Ostlund, Director and Treasurer

Mr. J. G. Ennes, Director and Secretary Manager.

Yours very truly,

COMMERCIAL FIXTURE AND
STORE FRONT INSTITUTE

Signed By: J. G. ENNES

"JGE:RP" Manager" [193]

Stamp Federal Bureau of Investigation April 10, 1940, indicates date letter was received in my office.

I know John Mullen. I first met him at his office at his place of business, at 72 Rausch Street, San Francisco, on or about April 6, 1940. This was following my meeting with Mr. Ennes and just he and I were in his office. The following conversation was then limited to defendants, Mr. Mullen, Mullen Manufacturing Company and Commercial Fixture and Store Front Institute:

(Testimony of Louis D. Wine.)

He told me he was president of Commercial Fixture and Store Front Institute; that Mr. Ennes was secretary and handled matters of negotiations and was actively representing the Association which was composed of men in lines of business similar to his own. That he had been in business for many years in San Francisco; employed approximately 65 members of the millmen's unions; that he was engaged in making cabinets and store fronts; had a substantial contract with the Woolworth Company and grossed \$200,000 a year from that contract; that he made a very small profit and the last year or so his overhead increased approximately 10 per cent. He stated he had a union steward who mildly objected to him using millwork; that he received most of his millwork from North Carolina, hardwood, things like that; that he had his own sticker machines and made most of his patterned lumber in the plant; that he felt if the unions made further demands for increase in salary, it would be necessary for him to discontinue business, as he couldn't run at a profit; that he felt Woolworth Company would take away his contract. He said he knew there was an agreement in San Francisco between the millmen and the association to keep out of the San Francisco area lumber that was not made in accordance with the current union wage scale.

He asked me about the investigation I was conducting and I told him it was in connection with Federal Antitrust Laws. He said he *will* entirely

(Testimony of Louis D. Wine.)

in favor of the Government's investigation; [194] he hoped they pursued it vigorously and that the Government would complete these Antitrust cases and clear up the position between the unions and association of employers. I mentioned to him there were Federal statutes on restraint of trade and he hoped there would be no restraint of trade; that the product would be permitted to freely come into San Francisco without restraint. With relation to the activities of the Institute and the agreement with relation to restraint of trade, the only thing I recall he said he knew there was such an agreement. It was a verbal agreement. At the time I spoke to him I do not recall he said anything about the unions in restraint of trade. He said there was difficulty in getting lumber into San Francisco Bay area that had been milled outside of that area.

With reference to the minute book marked Exhibit 67, being the minutes and by-laws of Commercial Fixture and Store Front Institute, it was stipulated that the signatures which appear at the end of the by-laws are authentic signatures and that the persons on there are members of the corporation Commercial Institute, and such exhibit was received in evidence against defendants Commercial Fixture and Store Front Institute, J. G. Ennes, John E. Mullen, Braas & Kuhn, Fink & Schindler, Ostlund and Johnson, Charles F. Stauffacher, Leo Roselyn and Joseph J. Schmidt, pursuant to understanding that all that is deemed in evidence is what plaintiff

(Testimony of Louis D. Wine.)

reads and defendants may read from the same book, but only what is read to the jury is deemed in evidence.

Thereupon Mr. Zirpoli read from the exhibit minutes of the first/directors' meeting of January 19, 1939, wherein it was resolved that members of Cabinet Manufacturers Institute who may desire to accept membership in the corporation are elected as members in the classification they now hold in Cabinet Manufacturers Institute, Northern Division; that the dues continue the [195] same. John Mullen was elected Director and President, and Oscar Ostlund was elected Director and Treasurer, in the place of Melbert B. Adams.

It was stipulated that the Oscar Ostlund name was a defendant and that the signature of J. G. Ennes, Secretary, was authentic.

Thereupon, Mr. Zirpoli read from Art. VI., section 2, 3 and 4 of the By-Laws, as follows:

"Sec. 2. President—The President, or in his absence or disability from any cause the Treasurer, shall preside over all meetings of members and directors and shall have the casting vote. Unless otherwise determined by the Board, he shall sign all contracts entered into on account of the corporation and shall do, perform and render such acts and services as the Board of Directors shall prescribe and require and as are usually done, performed and rendered by the president of a corporation. In his absence or disability from any cause the Treasurer shall act in his stead.

(Testimony of Louis D. Wine.)

“Sec. 3. Secretary-Manager—The Secretary-Manager shall be the custodian of the seal of the corporation and affix the same to all papers, instruments and documents requiring such seal; he shall keep the minutes and records of the corporation and such books as are prescribed by the statutes of this state to be kept or which may be required by the Board of Directors. In addition to the services usually and ordinarily performed by the secretary of a corporation, he shall act as general manager, and subject to the control and supervision of the Board of Directors shall conduct and manage the affairs of the corporation and act as the authorized representative of the Institute in its dealings with other groups or the individuals thereof.

“Sec. 4. Treasurer—The Treasurer shall perform such duties as are imposed by law and as may be required by the Board [196] of Directors. He shall receive and keep all the funds of the corporation, depositing and withdrawing them in such manner as may be determined by the Board of Directors; and at each annual meeting of the members he shall submit for their information a complete statement of his accounts for the preceding year with the proper vouchers. In addition to his other duties, the Treasurer shall perform such duties and have such powers as are ordinarily performed by the vice-president of a corporation and shall be invested with like powers.”

“Then at the very last page of this minute book

(Testimony of Louis D. Wine.)

containing any written data appears the following:

“The undersigned hereby accept membership in Commercial Fixture and Store Front Institute and promise and agree that so long as they remain members of the corporation they will abide by all the laws, rules and regulations regularly adopted; and that in the conduct of their business they will conform to, and will maintain and support, all labor agreements of every sort and kind in which Commercial Fixture and Store Front Institute is one of the contracting parties.’”

Thereafter followed the signatures of Mullen Manufacturing Co., J. E. Mullen, Pres., Ostlund & Johnson, by Jos. Kuhn, Fink and Schindler Co., E. F. Stauffacher, President, H. Schulte & Son, by H. Schulte, Jr., Leo Roselyn, d. b. a. Unit-Bilt Fixture Co., Ful-View Fixture Co., J. J. Schnidt, L. & E. Emanuel, Inc., by A. S. MacRae.

It is stipulated that the person who signed for L. & E. Emanuel Company was a representative of that company. The exhibit was then offered as to L. & E. Emanuel Company

(Testimony of Louis Wine resuming.)

I also visited Harry W. Gaetjen, one of the defendants named in the indictment, in his office, 3196 24th Avenue, on or about March 25, 1940. Beside Mr. Gaetjen Mr. Carl Sherman, [197] Special Agent of the Federal Bureau of Investigation, and myself were present. Mr. Gaetjen told me he was at that

(Testimony of Louis D. Wine.)

time inspector of the Lumber Products Association of approximately 14 members. The meeting was in the office of this association. A meeting took place on or about the 26th day of March of that year in that office. I attended with Mr. Sherman at the request of Mr. Gaetjen. A number of persons attended whose identity I did not know. Mr. Gaetjen was at the meeting. I don't remember definitely if Mr. Spencer was there. It was a meeting in the office of the Lumber [198] Products Association. Approximately 18 were in attendance. Mr. Gaetjen addressed the meeting.

"Mr. Zirpoli: I am now offering this as to all defendants in the case.

"Mr. Faulkner: We object to anything that happened at that meeting as hearsay, immaterial, irrelevant, and incompetent, and no showing that that is an act or declaration pursuant to or in furtherance of the conspiracy, a meeting of indicted defendants who are not before the Court, in the presence of two Department of Justice Agents investigating a case, and comes within the rule that acts or declarations of a person to be binding on a co-defendant must be acts or declarations pursuant to and in furtherance of a common design or conspiracy, an act or declaration of a lot of men in the presence of Department of Justice Agents could not come within that category.

"Mr. Zirpoli: We will connect this up and show that it was a part and parcel of the conspiracy and in furtherance thereof.

(Testimony of Louis D. Wine.)

"The Court: Overruled.

"Mr. Zirpoli: Q. You have told this was a meeting at the Lumber Products Association.

A. Yes.

Q. You attended this meeting and Mr. Sherman was present also? A. Yes.

Q. Will you tell us what Mr. Gaetjen said at this time, as you recall it?

"Mr. Faulkner: The same objection.

"The Court: Yes, overruled.

A. Mr. Gaetjen said the meeting was called for the purpose of discussing a demand or request made by the Millmen's Union for an increase of salary, that they were asking for \$9 a day and a 7-hour day. Mr. Gaetjen went on and stated that there was a verbal agreement between the Millmen and the Association to exclude from the San Francisco Bay area millwork that had not [199] been in accordance with the current wage scale, and he thought that the unions had not lived up to their part of the agreement, and he also brought out in his exact words, the purpose of the agreement was to create a sort of a Chinese Wall around the San Francisco Bay area, but the unions had not been vigilant in keeping this lumber out, and he thought they would not be entitled to any increase in salary, and Mr. Gaetjen stated 'We are not in a position to pay them additional wages.'

"Mr. Faulkner: I ask the Court at this time to limit that testimony in such a manner that it cannot bind any employers or any person in court.

(Testimony of Louis D. Wine.)

"The Court: I will limit it subject to connecting it up.

"Mr. Zirpoli: I expect to connect it up.

"The Court: If it is not connected up it is subject to a motion to strike. Go ahead."

I also had a conversation with the defendant, Walter C. O'Leary, about March 22, 1940 in a room of the A. F. of L., in Oakland. Just Mr. O'Leary and myself were present. I called him on the telephone, told him I was a special agent of the Federal Bureau of Investigation, and would like to make an appointment with him. He agreed to meet me at the A. F. of L. Building about March 22, 1940. I met him there in an empty room and we sat down and talked, and I told him I was making an investigation.

The following conversation was offered against defendants O'Leary and United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550:

"A. Mr. O'Leary told me he was Business Agent for Millmen's Union 550 in Oakland. I introduced myself to him, showed him my commission card, and told him I was making an investigation of the millwork in the San Francisco area. I told him I had been over to see a man named Stewart, I think is the name, I am not sure; [200] anyhow, he was in charge of the office of the Simon Bros. Wrecking Company in Oakland, and I asked Mr. O'Leary if he had been over there and he said yes, he had, that he gave them a list of the local planing mills from which they

(Testimony of Louis D. Wine.)

should buy their lumber. We discussed millwork and Mr. O'Leary said that his union would object to any lumber coming into the San Francisco Bay area, particularly to the jurisdiction of the Oakland Brotherhood covered by his union unless it was made in accordance with the current labor wage scale and according to current union working conditions. I asked him if they would object to using A. F. of L. lumber coming in, and if it was not made under those conditions, and he said they would, and I asked him how they would prevent this from coming in, and he said, well, it was usually effective if I go around to the offending companies and explain them our position and advise them not to use it, and I said, 'What do you tell them?' And the exact words he used were, 'persuasive eloquence.' He said, 'If that is not effective we will take other steps.' And I said, 'What other steps?' And he said, 'That will depend entirely on circumstances.' I said, 'Would you threaten to picket them?' And he said, 'Perhaps they would.' I said, 'Have you ever thrown a picket line around any of these companies?' And he said, 'No, we have not.' I asked him further about bringing into the Oakland Bay area a product manufactured by the Aladdin Company, he was familiar with it, that is the ready cut houses, pre-fabricated and shipped from Portland to Oakland, and he said his understanding was that the unions would object to using these, object to having those houses brought into the Oakland Bay area, and that the union men

(Testimony of Louis D. Wine.)

would not work on such products, and I said, 'Now, how would that house be constructed?' And he said, 'To have that built they would have to bring their own carpenters to Oakland.' And I said, 'Don't you think the union would object to that?' And he said 'Probably they would.' " [201]

Thereupon, the witness, Wine, left the stand, and

LEE MOFFETT

was recalled for further

Cross-Examination

By Mr. Routzohn:

Defendants' Exhibit A for identification, is a complete list of members of the Western Pine Association, as of September 10, 1941. The list was practically the same in 1937. My Association has a small branch office here in the Call Building, in San Francisco. It has had that office probably 8 years. There really isn't anyone in charge of it. It is a small branch office where they keep some of their books and publications. There is not an employee there at all times. Two men work out of it at present—one a forest engineer who travels over the country and comes into the office something like once a month. There is a man in the promotion department who does the same thing and sort of makes that his headquarters, but doesn't stay there. When I was working here I kept some supplies there, and went up there now and then. It is kept open in con-

(Testimony of Lee Moffett.)

nection with another office, the National Wooden Box Association. Our organization contributes to the support of Wooden Box, but it is an entirely separate organization, for the purpose of promotion of wooden boxes which is of importance to sawmills, so they contribute to the support. That office is open all the time, and the two offices are open to the public during office hours. There is a man in charge of the Wooden Box office. There are probably 3 or 4 employees there. I haven't very much knowledge on this because I have been gone three and a half years and when stationed here I didn't maintain this office; was just in and out of it; kept some supplies there and had nothing to do with paying the rent or running it—it was merely a sort of headquarters. I had a desk in a room just adjoining the Wooden Box. That office [202] was there and I could use it.

LOUIS D. WINE

recalled.

“Q. Will you continue and tell us your conversation with Mr. O'Leary?

A. We were discussing the Aladdin Ready-Built Houses, as they are called. I asked Mr. O'Leary whether the unions would object to their being constructed in the Oakland area. He said his understanding was they would object to that and they would endeavor to keep them out of this district.

(Testimony of Louis D. Wine.)

here. I asked him if he knew whether the Aladdin built houses were made by A. F. of L. labor. He said he didn't know. He said in any event they would keep them out if the millwork was not made in accordance with the current union wages then in Oakland, which he told me is \$1.06½ an hour, as I understood it. I said to him, 'Wouldn't that be contrary to the union policy?' I mentioned to him Mr. Hutcheson, the president of the International, I said, 'How would he feel about that?' He said, 'Mr. Hutcheson's statement to the union was, the union label should be considered the same as legal tender, the same as a five-dollar bill, good any place in the United States.'

"Q. Did he tell you anything as to the reason why they wanted to keep out millwork?

A. Yes, he did. He said there was an agreement to that effect.

"Q. Agreement with whom, did he say?

A. Between the millmen and the unions, and that he had visited a number of places and urged them not to take lumber that was made outside of the San Francisco Bay area, millwork that was made not in accordance with the current union wage scale, and he said if he found such lumber in such lumber yards, they would be permitted to use the present supply, but not be permitted to bring in any more.

"Q. When he spoke about outside the San Francisco Bay area, what did he include in that?

A. He said he was interested [203] only in the

(Testimony of Louis D. Wine.)

Oakland area and he was representing the Millmen in that area only.

"Q. He said he wouldn't permit the millwork to come from outside the Bay area? A. Yes."

"A. He said he would not permit it come into the Oakland area unless it was made in accordance with the current union wage scales prevailing in Oakland, and that he as the business agent and the other unions would do everything they could to keep it out.

"Q. Did he say that it should come from where?

A. He said coming from outside of the area, whether the Pacific Northwest or in the State of California."

The meeting which Gaetjen presided over wasn't a meeting called especially for me. When I approached him he said there is a meeting for tomorrow or the following day—I would like to have you present, come over. We said we didn't want to participate in the meeting. He said it is an open meeting, open to the public—a scheduled meeting. Before adjournment of the meeting, they agreed to further consider the union demands, they would have a later meeting.

Cross-Examination

By Mr. Faulkner:

The first interview I gave here in the order of my testimony was with Mr. J. G. Ennes. I do not recall meeting him before that interview. I think it

(Testimony of Louis D. Wine.)

was arranged over the telephone and I introduced myself, indicating I was a member of the Federal Bureau of Investigation. I explained to him I was investigating the mill work and mentioned in connection with that it was for possible violations of the Antitrust Act. Mr. Ennes indicated that the Commercial Fixture and Store Front Institute was an organization or corporation of which he was Secretary, and my recollection was that it had approximately 12 members. I couldn't say how long our meeting lasted. I made a notation of [204] the conversation in Mr. Ennes' presence. The testimony I have given does not purport to be the entire conversation. We had some that was entirely extraneous to the investigation. I have testified to certain things that would pertain to the investigation in answer to questions propounded to me. I had photostatic copies of certain agreements. The notes I made were in his presence—pencil notes I put down myself at the time of the interview. I have refreshed my recollection from my investigative report. With reference to my testimony in Court, I refreshed my recollection several times.

Thereupon, plaintiff's objection was sustained to the following question:

"Q. Would you mind bringing the notes that you used to refresh your recollection before giving this testimony, Mr. Wine?"

I recall taking from my portfolio certain documents and starting to interrogate Mr. Ennes. He

(Testimony of Louis D. Wine.)

did not tell me that he was not going to give me any information about those papers that I handed to him purporting to be agreements. I remember saying to Mr. Ennes if you don't want to use my copy of contracts, will you use your own, and that Mr. Ennes got out certain documents he had in his possession. I remember he brought his out. In my direct examination that Mr. Ennes indicated he was not familiar with certain clauses in the papers, I was referreing to his own contract. I directed Mr. Ennes' attention to a certain paragraph of his own contract,—the paper that he produced at the time. Mr. Ennes did not tell me that paragraph didn't mean anything. He said he didn't know the content of that; that he hadn't read it in the agreement. I questioned him about that and mentioned that it was most unusual for a Secretary of an institute not to know what he had signed. He said, "I don't care to discuss it further;" that he had heard about several indictments being returned in Federal Court in connection with [205] building trades and said, "I don't want to get involved." He didn't comment on the paragraph that "so far as my group is concerned, that paragraph does not mean anything." He said he didn't know what was in that paragraph. I am referring to the contract with his signature—the 1938 contract--June 15, 1938, the date it was effective, as I understood it. I mentioned that I did not think he was very helpful to the Government. I don't remember him saying, "So you may

(Testimony of Louis D. Wine.)

understand my position, I am not your witness at all." It is absolutely untrue that I got out a piece of paper and drew a picture of a Federal penitentiary, the Department of Justice and the Attorney General's office. I don't recall that I explained to Mr. Ennes the relation between the Federal Bureau of Investigation, the Attorney General's office and the penitentiary. I don't recall getting out a paper and diagramming it. I would say that it didn't occur. I do not recall drawing a diagram in connection with the incident where I said to Mr. Ennes "I don't think you are very helpful." There is nothing at all about a diagram in my notes. I have no recollection of that. I don't recall a conversation with Mr. Ennes about the business in which the members of the Commercial Institute were engaged. I didn't have a conversation about subpoenaing him some place as a witness; that if he would not cooperate I would subpoena him. I don't remember Mr. Ennes saying that I could subpoena him and that if the Judge wanted him he would come. I had one contract when I was talking with Mr. Ennes. The discussion related to millwork. He was not inclined to talk freely with me. The contract that I had, that I asked him about, that we were particularly interested in, was the one with the restrictive clauses of 1936. I only had one, he had several there—he had two that I recall. I do not think they were duplicates of the same contract. The one we discussed had the restrictive clause in it—restricting millwork, and I

(Testimony of Louis D. Wine.)

asked him specifically about that. The one we discussed was [206] the contract he had—he brought his contract out. My recollection is this conversation was had with respect to a contract dated June 15, 1938.

I talked to Mr. John Mullen shortly after I talked to Mr. Ennes—shortly after, in April, 1940. I introduced myself to Mr. Mullen and explained to him I was a member of the Federal Bureau of Investigation. I told him the F.B.I. was making an investigation of millwork; that there was a reported Antitrust violation and we were obtaining information. I asked him to cooperate with me and he said he would cooperate fully. I don't remember the time of our conversation. He gave me some information regarding the business of Mullen Manufacturing Company. I don't recall the details of it. He told me they had been in business for many years, employed approximately 65 union millmen; that he had a contract with Woolworth's; that it grossed \$200,000 a year; that he was making very little out of it due to overhead. He indicated what he meant by overhead. He mentioned Social Security, increased cost of raw materials, new taxes, that taxes were increasing overhead approximately 10 per cent, as I recall, and he mentioned cost of his labor. Upon my direct examination I said that Mr. Mullen got into discussion concerning an agreement to keep material out of San Francisco. He said he knew there was such an agreement; that is substantially all I remember. I don't recall he said he was not a

(Testimony of Louis D. Wine.)

party to the agreement and that he didn't want *thing* kept out of San Francisco. I don't recall that he said definitely that it was an agreement to ~~keep~~ material out of San Francisco and that Mullen Manufacturing Company were the users almost in their entirety of articles coming from without San Francisco, and that he was not a party to that combination if there was one. He said he was a big user of millwork. He told me a large quantity came from the East; that he has his own milling machines and could make his own millwork. He said some [207] of the material came from without and some came within the State. He mentioned in the course of our conversation he was in favor of the efforts of the Government to break up any combination that restricted the flow of millwork into this area. That is substantially my testimony. He mentioned hardwood coming from out of the State of California, from North Carolina. He stated a quantity of their business was work on hardwood. I don't remember the details or the quantity he expressed. He mentioned the Antitrust Laws, said he was heartily in favor of the Sherman-Arnold investigation and thought there should be a free flow of material interstate without any restriction whatever. I don't recall what I said. He indicated the gross volume of his business only in so far as the Woolworth contract was concerned.

When I met Mr. Gaetjen in March, 1940, I introduced myself, explained I was a Federal Bureau of Investigation Agent, showed him my commission

(Testimony of Louis D. Wine.)

card, and explained we were making an investigation of any business violation of the Antitrust Laws in connection with millwork. It was after I indicated the purpose of the investigation that I was invited to attend the meeting which was held in Mr. Gaetjen's office. I believe the number is 3196 24th Street, San Francisco. That is not a mill, it is an office of the Lumber Products Association.

I made notes of the conversation with Mr. Mullen and dictated them to my stenographer. I have refreshed my recollection from them before testifying. I have done that recently.

Thereupon, Mr. Faulkner made the same request for the production of the notes. The request was denied by the Court and an exception was noted.

I don't remember in the conversation with Mr. Ennes that he said to me, "If you are going to make notes here of the conversation, let us now call in a stenographer." He merely gave me information which I took down at his dictation. I don't [208] recall that when I started to take notes Mr. Ennes said "If you start taking notes I am going to get a stenographer." I think I would deny that occurred. I know I would, because I was taking notes at his dictation. I have no recollection of any conversation concerning calling in a stenographer. It is possible that it may have happened.

(Testimony of Louis D. Wine.)

Cross-Examination

By Mr. Routzohn:

I live at 1540 Alvarez Avenue, San Jose, California,—have lived there about a year. Before that, San Francisco for the past three years. Before then, in Kansas City about 19 months. Before then, in Salt Lake City approximately two years. Before then, in San Francisco about four years. During all that time I was Special Agent of the Federal Bureau of Investigation. I have been a Special Agent approximately 17 years. Before I went to the F. B. I. I was employed in the Department of Justice as a clerk at Washington, D. C., for approximately three months. I am 47. Before then I was Purchasing Agent of Sun-Maid Raisin Growers at Fresno, for approximately three years. In 1921, I was Purchasing Agent for Yosemite National Park for two years. I met Mr. O'Leary for the first time approximately March 22, 1940, and made an appointment with him by telephone, and met him in the A. F. of L. Building, Oakland, California. I did not know then whether Mr. O'Leary had been called as a witness before the Grand Jury. I don't know of my own knowledge whether he had testified before the Grand Jury. I saw him in the Grand Jury witness room after that. I presume he was called—I don't know. I took some notes while we were having the conversation. I told him our purpose in connection with a general investigation we were making into the mill-work industry. I didn't write out a written state-


(Testimony of Louis D. Wine.)

ment and have him sign it. I have no recollection of that.

I took down notes of the conversation dictated for my [209] investigating report. I examined my regular investigation report before coming on the stand, and refreshed my recollection from it last Monday and Tuesday. F. B. I. reports are made in a number of copies. The original goes to Washington and is retained in the files there. Three copies are retained in our San Francisco office. One copy has been transmitted to the U. S. Attorney in San Francisco. I have the copy of the F.B.I. which I consulted. The notes were destroyed after the report was made. The report contained everything in the notes. I know of no statement signed by Mr. O'Leary on March 22, 1940. I have nothing in my possession signed by Mr. O'Leary. He said he was business agent of the Millmen and they were getting a high scale in this area. As I recall, \$1.06½ an hour. He did not state the scale was in dispute at the time. I don't recall he made mention of an increased wage scale. I didn't know there was a wage scale dispute on at the time I talked to him. He said he did not object to lumber except that which came in manufactured at a different wage scale and under different working conditions than prevailed in the local area. He used the expression, "persuasive eloquence" in keeping out lumber; that he would talk to the users of this lumber and convince them, and keep it out of this area. He didn't say if he was

(Testimony of Louis D. Wine.)

unable to convince the party that the lumber was permitted to be worked in the mills and also used by the carpenters on the job. He did not tell me that no union refused to work on lumber that came in so long as it had the union stamp on it. He didn't tell me that the carpenters at no time refused to work on lumber that was delivered on the job no matter where it came from. He told me the policy of his union was to keep any millwork out of the Oakland area that was not made in accordance with the prevailing wage scale of that union—\$1.06½ an hour. He said the local union is getting a good wage and we do not want to compete with millwork at a lower wage scale regardless of whether made [210] under union conditions or not. He did not give me the reason other than they were getting higher wages. He didn't mention trying to keep the members of his own union in employment, but one would naturally draw that conclusion. He said they were making good wages. He was very active in representing his union. I asked him, "Does Mr. Hutcheson approve your methods?" And he said, "No, Mr. Hutcheson has a different idea." He said, his statement was that the union label should be considered the same as legal tender, and he offered as a result the same as a \$5-bill, good any place in the United States. I asked him specifically about Aladdin fabricated house and whether he was familiar with them and knew where they were made, and he said, in Portland, and they were being shipped here and



(Testimony of Louis D. Wine.)

marketed in the Bay area, in Oakland. I said, "Do you know they are 100 per cent union?" And he said, "Regardless of whether they were or not," he would not permit them to be sold and erected in Oakland, unless made in accordance with the current wage scale prevailing in that area. He did not express himself about being union made. I told him they were. I told him that I had received information they were 100 per cent union made; shipped to Oakland in a sealed freight car, and that the local union did not work on them because they were not made at the current union wage scale.

By Mr. Tuttle:

William L. Hutcheson, General President of the United Brotherhood of Carpenters and Joiners of America was evidently the one referred to as saying lumber bearing the union label, the carpenter label, should circulate as freely as a \$5-bill circulates.

Redirect Examination

By Mr. Zirpoli:

I would say the conversation with Mr. Ennes took considerably less than two hours. The contract I was asked about restrictive clause in a contract, was the contract that would [211] start on June 15, 1938. I meant that the meeting with Mr. Gaetjen was at the office of Lumber Products Association.

In a general investigation, the usual practice is to destroy original notes after the report is made and verified by the agent. The notes used to refresh my memory are the notes dictated by me. My own

(Testimony of Louis D. Wine.)

copies are carbons of the original sent to Washington. After being approved and signed by the agent in charge, the original is sent to Washington. Office copy is signed by the stenographer and retained in our files. Reports from which I refreshed my recollection were made within a few days after interview; was checked at that time and truly reflected the interview had.

Recross-Examination

By Mr. Faulkner:

I have no control over the reports. That is with the Attorney General. I said in general investigations at times these notes are not retained. I do not know what caused that practice. It is not a fact that the purpose of destroying original notes is that an accurate record of what happened at a particular time in the past can no longer be in existence. It would be difficult for me to determine actually how long I talked to Mr. Ennes. I have made thousands of interviews since that time. I base my statement it was considerable less than two hours for the reason that Mr. Ennes did not answer questions; said he didn't want to become involved in it. I could not give you the exact period of time. I could not tell within twenty minutes either way..[212]

C. B. SHERMAN,

called as a witness in behalf of the plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Zirpoli:

I am Special Agent of the Federal Bureau of Investigation and have been since December, 1939. I was assigned to the San Francisco office in March, 1940. I know Mr. Louis Wine who is also a Special Agent of the Federal Bureau of Investigation. I accompanied Mr. Wine to the office of Lumber Products Association in San Francisco in the month of March, 1940, and saw Mr. Gaetjen there. I attended a meeting of Lumber Products Association with Mr. Wine. Besides us and Mr. Gaetjen there were several members of Lumber Products Association present. I don't recall their names. Mr. Gaetjen was secretary of Lumber Products Association and presided at and addressed the meeting.

"Q. Will you tell us what Mr. Gaetjen said at that meeting?

"Mr. Faulkner: We object to that as immaterial, irrelevant, and incompetent, hearsay as to the defendants on trial, and not within the issues of this case, and no foundation laid, in that there is no evidence that any act of declaration of Mr. Gaetjen at that time was pursuant to or in furtherance of the charge laid in this indictment.

"The Court: Overruled.

"Mr. Zirpoli: Q. Now, will you tell us what Mr. Gaetjen said at that time? "

(Testimony of C. B. Sherman.)

"A. Mr. Gaetjen called the meeting to order, and, as I recall, he said—the first thing he did was to introduce Mr. Wine and myself as members of the F.B.I., and then stated the purpose of the meeting was to determine whether or not the Association would go on record as approving a new union demand for increased wages. He said that, as the members there would recall, they had an agreement to increase the wage scale [213] in the past, and that they had agreed to do it on the condition that the union would cooperate with them in keeping the millwork products out of, that is, the products from Washington and Oregon out of the Bay area, and he said that under the agreement that they had made the products from those two particular States, Washington and Oregon, would not be worked on by the union when they were sent in here, and that, in effect, it would build a sort of Chinese Wall around the Bay area. He did state, however, that he was going on record as not being in favor of the new wage increase, due to the fact that the unions had not carried out their end of the previous agreement that he talked about, that instead of keeping the products out and building a sort of Chinese Wall around this area they had made such demands on the Lumber Association here, the Lumber Products Association, that it built a sort of Chinese Wall around the Bay area, and that he wanted their expression of opinion as to whether or not they would be in favor of the wage increase.

"That is about all I recall."

(Testimony of C. B. Sherman.)

Cross-Examination

By Mr. Faulkner:

That day was the first time I had a meeting with Mr. Gaetjen. We were out in the morning, at which time he told us there was to be the meeting which we attended, and we were back; I think it was in the afternoon of that same day. He said it would be a meeting of the Millmen and it was an open meeting. I don't recall a conversation with Mr. Gaetjen that afternoon before the meeting started. He did not state: "What are you doing here?" He invited us there that morning; I am sure he said that it was an open meeting; that we could come if we liked. I don't recall just what words he used, but he said there was to be a meeting; it was open. I think there [214] was a sign on the outside; we said we were there just to observe the meeting, and he said we were free to do so. We got there shortly before the men assembled; some, but not all were there; the meeting had not started; shortly before it started we went in and sat down.

Mr. Gaetjen did not state to Mr. Wine or me that if we wanted to see him we would have to come back later. He did not say anything like that and there was no further conversation about our being allowed to be present at the meeting. I had no conversation with Mr. Gaetjen indicating that an investigation was being conducted concerning Antitrust activities; I was merely an observer with Mr. Wine. I do not recall that Mr. Wine made such statement; he may have.

(Testimony of C. B. Sherman.)

Mr. Wine introduced himself; said that he was Special Agent Wine and that I was Agent Sherman. I think Mr. Wine asked to see any minutes or records they might have pertaining to the formation of the Association. I don't recall he indicated the purpose or that there was any investigation being conducted concerning activities of Lumber Products Association. He made no statement concerning activities of the Millmen in San Francisco, the unions. He asked for a membership list of the Association.

Mr. Wine introduced himself and me as Federal Bureau of Investigation Agents; asked for some of the records and I don't recall he indicated the purpose; it is possible he did. He did not mention constitutional rights. He merely requested the records; he did not have to produce them. Mr. Gaetjen stated his records were very meager. I believe all that was done at the time was that Mr. Gaetjen dictated to Mr. Wine the names of the members of Lumber Products Association from his files. I remember clearly he told him he did not have to produce the records; that he was merely requesting that he be shown or [215] would like to see them. I did not participate in the conversation.

At the meeting later in the day my best recollection is between ten and twenty, possibly twelve or fifteen men were there. I don't know any of them. I was introduced to one or two but do not recall their names. I do not know of my own knowledge that they were Millmen.

About a Chinese Wall, Mr. Gaetjen said that they

(Testimony of C. B. Sherman.)

had formed an original Agreement with the union prior to the time of this meeting and that the purpose of the Agreement was to prevent the millwork from Washington and Oregon from entering the Bay Area; and that in so doing they were forming a sort of Chinese Wall around the Bay area to keep other products out in order that the products of the Association within the Bay area could be used. He told that to the members present as I recall. That was the purpose of that Agreement. I gathered they knew what the purpose of the original agreement was since they were members. I do not know whether they were members or not. From what he said I understood he was explaining to them, as members, what the purpose of the original agreement was, or calling it to their minds. I made no notes and I am testifying solely from recollection of the meeting I attended. I have not refreshed my recollection by reading the testimony or any reports by Mr. Wine. I have not read anything; was forbidden to read them. I am testifying solely from memory of the transaction that occurred in March, 1940.

“Q. Now, as a matter of fact, Mr. Sherman, didn't Mr. Gaetjen say to that group of men in connection with the Chinese Wall and explain to them that the labor demands, and the amount of money being paid for labor had created a Chinese Wall in the Bay area, so that the merchandise of those Millmen could not go out of the Bay area?

“A. I stated that first, I said that following the

(Testimony of C. B. Sherman.)

statement that the purpose of the original [216] agreement was to build a Chinese Wall around the Bay area, the activities of the Unions in failing to carry out their part of the agreement had succeeded in building a sort of Chinese Wall around the Bay area."

Mr. Gaetjen did mention a Chinese Wall that had been built around the mills of San Francisco so that their products could not go out from this market in competition with a lower wage scale in other areas in this immediate district; but before he mentioned that, he also mentioned the Chinese Wall which had been the purpose of the original agreement that they had made with the Union. He mentioned the Chinese Wall twice on that day, in two different senses. He used the expression in the sense of a wall that prevented articles going out and preventing articles coming in.

I do not recall any conversation on the subject of the position of the mills in competing with similar mills in this general locality. I do not recall what he stated, if anything, of the position of the mills with reference to competing with other mills in this immediate vicinity, apart from Washington or Oregon, or Wisconsin, or Los Angeles.

I do not recall the exact amount of the Union demands; my best recollection was they were demanding a Nine Dollar (\$9.00) day; apparently it was higher than it had been theretofore; the exact amount of increase I could not say; I do not recall.

(Testimony of C. B. Sherman.)

My statement was based upon what I heard at this meeting. I gathered at the meeting the Union had made a demand for additional compensation. That information was imparted to those who came to the meeting, by Mr. Gaetjen. My recollection is he said he was not in favor of meeting the demand. As I recall about all he said: "As your secretary, I am not in favor of meeting the increased demand."

He asked for a discussion on the subject and they [217] agreed to send to the Union, through Mr. Gaetjen, a counter proposal, the amount of it I do not recall. He did not say they could not meet the demands of the Union; but they would not be in favor of it. Mr. Gaetjen said he was not in favor of meeting it due to the fact that the Unions had failed to hold up their end of the agreement. I do not remember the general discussion. They talked about a man that was an acquaintance of all of them that had recently bought a mill of some character, and that he had anticipated quite a profit through the operation of it, but had not done so. I feel sure the counter proposal to be given the Union was stated in my presence; I do not remember what it was.

By Mr. Routzohn:

I am testifying purely from memory; I have had conversations with several people about the case. I did not converse with Mr. Wine before he went on the stand about what I was to testify to. We didn't talk over my experiences that I related this morning; we were strictly forbidden to do that. We didn't

(Testimony of C. B. Sherman.)

discuss what we were to testify to. I haven't read a report or notes of any kind; I made no notes and read no notes that Mr. Wine made or had or reports he may have had. I told Mr. Clark everything I recall and talked to Mr. Zirpoli and he asked me to go over all I knew about the case which I recall today, and which I did. Other than that I have had no outside help in refreshing my memory. They didn't tell me anything; I am relying entirely upon memory. To the best of my knowledge I am certain of what I have testified. I have made numbers of other investigations since 1940. I have not attended other meetings of that character. I recall very definitely what took place as I have given my testimony.

I don't recall Mr. Gaetjen saying: "We are not in position to pay them additional wages." [218]

My recollection is he said he was not in favor of granting the increase. If Mr. Wine testified that Mr. Gaetjen said: "We are not in a position to pay them additional wages", I couldn't say if Mr. Wine is correct. All I can say is how I recall it. My testimony is based upon memory and what I recall took place. I remember mentioning, explaining Chinese Wall several times in my testimony. I don't recall that Mr. Gaetjen said, when he mentioned the Chinese Wall, that the agreement between the Millmen and the Association was to exclude from the San Francisco Bay Area millwork that had not been made in accordance with the current wage scale.

(Testimony of C. B. Sherman.)

Mr. Faulkner:

Mr. Zirpoli explained that I should not refresh my memory by talking it over with Mr. Wine, or read any reports; he did that when I hit San Francisco, the day I arrived, I think it was Thursday.

Redirect Examination

By Mr. Zirpoli:

I did not prepare the report. The conversation I told about took place in 1940. I prepared no memorandum of what transpired at the meeting nor did I read any memorandum prepared by anybody else in 1940. I was appointed Agent of the Federal Bureau of Investigation in December, 1939. I spent from December 4th until February 17th in Washington, D. C. in Training school.

Recross-Examination

By Mr. Routzohn:

"Mr. Routzohn: Just a moment.

"Q. Since you have not had the opportunity of seeing the notes of Mr. Wine, I will ask you—I am reading from Mr. [219] Wine's testimony—"Mr. Gaetzjen went on and stated that there was a verbal agreement between all Millmen and the Association to exclude from the San Francisco Bay Area millwork that had not been made in accordance with the current wage scale."

"Now, will you state whether or not Mr. Wine was correct in that statement, or whether your statement is correct?"

(Testimony of C. B. Sherman.)

"Mr. Zirpoli: I object to this as argumentative, and it has been asked and answered.

"The Court: Sustained.

"Mr. Routzohn: That is all.

"Mr. Zirpoli: That is all."

Thereupon the Government called upon Bay Counties District Council of Carpenters to answer to the subpoena duces tecum, with the understanding that the same objection should be reserved. The identity of documents of Bay District Council of Carpenters was stipulated as follows:

5. Folders marked "U. S. Exhibits Nos. 109 to 113," respectively, for identification, are the minutes.

"U. S. Exhibit No. 114", for identification, is an Agreement or copy of Agreement.

"U. S. Exhibit No. 115", for identification, is a folder containing correspondence file and miscellaneous papers.

"U. S. Exhibit No. 116 and 117", for identification, are booklets consisting of constitution and by-laws.

Thereupon a miscellaneous file and agreements, which were part of the records of Local 550, were identified and added to the records of Local 550.

Thereupon, by stipulation, records of Millmen's Union No. 262 were identified as follows:

"U. S. Exhibit No. 118, for identification, is the minutes of Local 262; and "U. S. Exhibit No. 119, for identification, is the charter. [220]

Thereupon records of Local 1956 were identified as follows:

The charter was marked "120"; the minutes "121"; the constitution "122"; correspondence "123", "U. S. Exhibits for identification."

It was stipulated that the minutes, papers and correspondence produced are what they purport to be.

Thereupon minutes of the Six Counties Conference Committee, kept by Walter O'Leary, were produced from the possession of the secretary, Walter O'Leary, and were marked "U. S. Exhibit No. 124", for identification.

Thereupon, over objection that it was incompetent, irrelevant and immaterial, a certified copy of the Articles of Incorporation of Commercial Fixture and Store Front Institute were received in evidence and marked "U. S. Exhibit No. 125".

Mr. Howland thereupon read from the exhibit the certificate thereto of Frank C. Jordan, Secretary of State of the State of California, showing the transcript to be a full, true and correct copy of the original on file.

"The paragraph of these articles of incorporation of the Commercial Fixture and Store Front Institute which begins "Second," reads as follows:

"That said corporation is not formed with a view to, and does not contemplate, pecuniary gain or profit to the members thereof, and does not contemplate the distribution of gains, profits or dividends

to its members for any service by it rendered; and that the purposes for which it is formed are:”—

“And skipping to the paragraph on page 2 which reads:

“To represent the members of the Institute, or any of them, in any dispute or controversy relating to the negotiation, execution and performance of a fair labor contract in which [221] any member of the Institute may be, or might become, involved.

“To contract in the same manner and to the same extent, and to deal with real and personal property, as a natural person could do; and to have and possess all the rights and powers given to non-profit corporations by the laws of the State of California.”

“That is all I will read at this time.”

It was thereupon stipulated that the only part of the exhibit in evidence, is the portion read.

“Mr. Faulkner: In order that what Mr. Howland has read will be clearly understood, I will read a couple of very short paragraphs:

“We, the undersigned, resident of the State of California, do hereby voluntarily associate ourselves together for the purpose of organizing a nonprofit corporation under Title XII, Part Four, Division First, Civil Code of the State of California, and we do hereby certify:

“First: That the name of said corporation shall be Commercial Fixture and Store Front Institute.”

“Then comes the paragraph read by Mr. How-

land, and Mr. Adams suggests that all the purposes be read. The first purpose in paragraph 2 was read by Mr. Howland. Then appears the following:

"To encourage and facilitate social, and more intimate personal, relationships among, and to provide entertainment and recreation for, general contractors who are primarily engaged in designing, manufacturing, selling and installing commercial fixtures and store fronts and work incidental thereto, and who are desirous of maintaining a high standard of business ethics and of dealing fairly and conscientiously with each other and with their employees and the public.

"To collect, compile and make available to its members information, statistics and data of every sort that may be deemed [222] to be of interest or advantage to the members of the Institute or to the industry as a whole.

"To conduct schools and classes for the education and training of apprentices; and to foster and encourage the apprentice system among the members of the Institute and in allied trades and crafts to the end that youth may be properly and adequately served and that the industry will not suffer for lack of skilled artisans.

"To do whatever can be done to maintain proper relationships among the members of the Institute and between them and their employees, and to insure the honest observance of all agreements, contracts and obligations.

(Testimony of C. B. Sherman.)

“To secure collective action by the members of the Institute to the end that stable, peaceful and harmonious relations between them and their employees will be promoted and established, and that working conditions fair and just to both employers and employees may be maintained; and as an organization to co-operate with any other group or groups of employers with respect to any matter or thing that may be deemed to be of advantage or interest to the Institute or to its members, or any of them.”

“Then come the two paragraphs read by Mr. Howland.

“Third: That the county in this state where the principal office for the transaction of the business of the corporation is to be located is the City and County of San Francisco.”

ALFRED E. SCHMIDT,

called as a witness in behalf of the plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Howland:

I am Clerk, auditing department, Crocker First National Bank of San Francisco. Records marked “U. S. Exhibits [223] Nos. 126 to 130” for identification, are records of the bank produced pursuant to subpoena. Papers marked “Exhibit 126” for

(Testimony of Alfred E. Schmidt.)

identification, represent deposit tags made to account of Ostlund & Johnson in a commercial account for the period November 5, 1936, to December 31, 1940, inclusive, and are all of the deposit slips I was able to find in the bank's records, whose practice is to keep deposit tags for a period of five (5) years. "Exhibit 127" for identification, consists of a signature card in the name of Ostlund & Johnson, evidencing commercial account under date of March 7, 1930, bearing signatures of those authorized to sign on the account; also a signature card representing account in the name of Cabinet Manufacturers Institute of California, Northern Division, opened November 20, 1930, bearing signatures of those authorized to sign on the account; also signature card representing account in the name of Commercial Fixture and Store Front Institute, Incorporated, opened on January 29, 1940, bearing authorized signatures to sign account; copy of resolution of Cabinet Manufacturers Institute of California, Northern Division, regarding authorized signatures; letter dated June 15, 1931, signed by Oscar Ostlund, regarding signature of Joseph Kuhn on account of Ostlund & Johnson and letter of Ostlund & Johnson, signed Oscar Ostlund, regarding withdrawal of authority of L. W. Forbes and Joseph Kuhn to sign checks; acknowledgment of the letter by Crocker First National Bank. Papers marked for identification 127 are original records of the bank pertaining to the two accounts referred to and were prepared in the regular course of business. Bundle marked

(Testimony of Alfred E. Schmidt.)

for identification "Exhibit 129" consists to deposit tags in commercial account of Cabinet Manufacturers Institute of California, Northern Division, from April 8, 1937, to December 5, 1939, and are all of the deposit slips I was able to find in the bank's records.

I also have ledger sheets covering commercial account of Cabinet Manufacturers Institute of California, Northern [224] Division, covering aforementioned account for period from April 8, 1939, to January 29, 1940. Ledger sheets relate to the same account as the deposit slips, and deposit slips were received in the regular course of business. Ledger sheets were likewise prepared in the usual course of business. To the best of my knowledge the ledger sheets correctly reflect transactions which they purport to record and were made in the regular course of business.

"Exhibit for identification 130" covers deposit tags for commercial account of Commercial Fixture and Store Front Institute for the period of January 25, 1940, to December 11, 1940, inclusive; also ledger sheets for the same account for the period January 29, 1940, to December 27, 1940. The deposit slips are all I was able to find in the bank's records and are the original deposit slips received by the bank in the regular course of business. The ledger sheets relate to the same account as the deposit slips and were prepared by the bank in the regular course of business, to the best of my knowledge and belief.

(Testimony of Alfred E. Schmidt.)

The bundle of sheets marked for identification "Exhibit 128" is ledger sheets covering the commercial account of Ostlund & Johnson for the period of December 16, 1935, to December 31, 1940, inclusive, and relate to the same account as the deposit tickets marked "Exhibit 126" for identification. They were prepared by the bank in the regular course of business to the best of my knowledge and belief.

My position is Clerk, auditing department. I have been employed in that capacity about twenty (20) years and I am familiar generally with the system of bookkeeping. Ledger sheets are records of original entry and are the bank's permanent records of the transactions that purport to record.

Cross-Examination [225]

By Mr. Faulkner:

I did not prepare any of the papers numbered 128 myself, nor participate in any of the transactions reflected by such records. I did no physical work on any of the records except take them out of the file and bring them here. I first saw the deposit tags, No. 126, after the service of the subpoena. I did not take any of the purported deposits nor have any business transactions with Ostlund & Johnson on any of them. None of the deposit slips numbered 130 were made by me; nor had I seen them until I received the subpoena, to the best of my knowledge and belief. My connection with these records is.

(Testimony of Alfred E. Schmidt.)

that a paper was served on me; I went into the files and brought them out. None of the resolutions were made pursuant to a request by me. I had no business transactions with Mr. Ostlund or his wife or with Mr. Mullen and Mr. Ostlund. To the best of my knowledge and belief, the first time I saw any of these papers was when a subpoena was served and I brought them out here.

Redirect Examination

By Mr. Howland:

I have been employed by the bank for approximately twenty-five (25) years. The bank does not require that the depositors file their own deposit tickets. The bank does not prepare a deposit ticket. These records are directly under charge of the auditing department of the bank, filed in what is known as the auditor's vault; the auditor of the bank has charge of them. After colloquy between Court and counsel, concerning the purpose of proof, it was stipulated as follows:

"Mr. Faulkner: I understand, your Honor, that the purpose of all of this is to prove that they were members of the Commercial Fixture and Store Front Institute, a corporation, and also the Cabinet Manufacturers Institute of California, Northern [226] Division. With respect to the Commercial Fixture and Store Front Institute on behalf of the defendants we represent, we stipulate that all of these defendants that Mr. Adams' firm and I represent were members of the Commercial Fixture and Store

Front Institute, a corporation, the articles of which were read during the period covered by the indictment, the return of the indictment, on the one hand, and the date of incorporation on the other, that is that full period; and that all of the members of the group that are represented by Mr. Adams' firm and myself were members of the Cabinet Manufacturers' Institute during the period covered by the indictment up to the incorporation of the Commercial Fixture and Store Front Institute, except Mr. Roselyn; it commenced to exist at the end of 1937, and further, that each defendant represented by Mr. Adams' firm and myself paid dues to the Cabinet Manufacturers' Institute during the period that we have stipulated they were members, and that they paid dues in the corporation during the period we have stipulated that they were members.

"Mr. Howland: Might I ask what is the situation of Mr. Roselyn?

"Mr. Faulkner: He did not start business until 1937.

"Mr. Howland: But after that time—

"Mr. Faulkner: The stipulation binds him from the time he commenced his business, in the end of 1937, until the date of the return of the indictment, he was a member of either of those institutions and paid dues, and that stipulation is entered into with the understanding that we are not going to be bothered with any of these records.

"The Court: Yes.

"Mr. Bacigalupi: On behalf of Mangrum, Holbrook & Elkus, that company was incorporated on July 2, 1937. Since that time it has been a member of the Institute and has paid dues at various times although not the full amount. Mr. S. [227] Kulcher was not a member of either of those institutes and has never paid dues, so that of course I cannot make that stipulation, but I would say this, that if the Government can show through any bank account that he did we have no objection to their producing any bank to show that he did make payments.

"Mr. Faulkner: We will state to your Honor that if all of the records were produced they would never show Mr. Kulcher paid any dues.

"Mr. Howland: That is satisfactory to the Government. May the record show that the various counsel representing the labor union defendants have no objection to this stipulation.

"The Court: I have heard no objection. I suppose the records that were introduced may be withdrawn?

"Mr. Howland: Yes, the stipulation will be substituted for our proof.

"The Court: Thank you, Mr. Faulkner. While we are having a little wait here, have all counsel filed their proposed instructions?"

S. H. McNAMAR,

called as a witness in behalf of the plaintiff, was duly sworn and testified, as follows:

Direct Examination

By Mr. Burdell:

I am manager of Symon Brothers; I have held that position thirty-three (33) years. I have charge of the office, buying, advertisements, correspondence. Buying includes everything in building materials. Symon Brothers is located at 1435 Market. Its business is building materials and wrecking, including millwork.

I met Charles Helbing, I think the first time in October, 1939, at my office at Symon Brothers. I believe he [228] said he represented Bay Counties Council of Carpenters. No one was present at the meeting but us. He said he was there for the purpose of asking our cooperation in the buying of certain lines of materials, certain sash, open sash and certain kinds of doors, and that we would be required to buy our materials within the jurisdiction of five (5) Bay Counties, consisting of Alameda, Contra Costa, San Francisco, San Mateo and Santa Clara. I asked him if we complied with that request, where would we procure our material? "Well", he says, "there are plenty of mills here in San Francisco and around the Bay." I think I asked him where he might suggest and he suggested the Eureka Mill and Boorman, and I am not positive, but I think he said the Pacific Manufacturing

(Testimony of S. H. McNamar.)

Company of Santa Clara; but he said: "There are others"; and I informed him it would be impossible for us to buy from any of these mills that he mentioned or anywhere within the jurisdiction of these five (5) counties and compete with the going prices here in San Francisco at the time, and he asked me then if I had—I spoke particularly of carload lots—attempted to buy cars in San Francisco and I told him we had not because it was worthless—a waste of time. The mills themselves realized this and they didn't even solicit our business.

I asked him who had agreed to this proposition of his Union, and he said there was mostly all of them coming in with us on it, something to that effect. I told him I didn't see how we could do it, but would take it up and consider it and talk to him later.

I think I told him that the doors contained the Union Label and that they were—in fact, the sash and doors both were being manufactured by Union labor in the Northwest. He said: "That doesn't make any difference; we have idle men here and we have to put them to work."

I mean the one-panel and the five-panel front doors [229] we were purchasing; they contained the Union Label but the sash did not.

Eureka Mill is located on 1700 block, Mission Street. Boorman Mill is located farther down South of Market. We have done business with them.

(Testimony of S. H. McNamar.)

I had another conversation with Mr. Helbing in November, 1939, in my office; just he and myself were present.

He said he was in on the same proposition that he was previously and wanted to know what we had done about it and I told him we had done nothing about it and he was in more of a defiant mood and said: "It has come to the point where it will be necessary for you to buy in these counties," and the rest of the conversation was very similar to the one I gave before. He finally paused and I didn't say anything, and after a couple minutes he got up and said: "Well, this is your answer, is it?" I said: "Yes, that's the answer." Then he left.

Symon Brothers does not operate a planing mill. We have a rip saw, a cut-off saw, a little mill, not a planing mill. The business of the company consists of purchasing and selling.

There was a third meeting with Mr. Helbing in December, 1939. There was present Mr. Ryan, David Ryan and Mr. Helbing and Mr. Rickett; they are all representatives of the Building Trades, and Mr. William Symon who is one of the partners and owners of Symon Brothers. Mr. Ryan said he was there in the interest of Bay Counties Carpenter Association. I don't think Mr. Rickett told whom he represented; I knew he was with the Building Trades; I never met him before. There was a little conversation took place according to general conditions at first, and Mr. Ryan made the statement

(Testimony of S. H. McNamar.)

that he was there in the interest of the carpenters, the Bay Counties Carpenter Association and that he would like to see us cooperate in the buying of this material, and we went through the same conversation [230] that I have already given, which related to prices and competition and I informed him the mills they wanted us to buy from in San Francisco were practically in competition with us. Then Mr. Helbing made the statement that for the good of the community, whether we made any money or not on the sash and doors, we should buy it here, just to keep these fellows working, or words to that effect. Mr. Symon then asked Mr. Ryan, "What would happen? Would they throw pickets around the place?" Mr. Ryan sort of evaded that particular question, but said, "Well, your men in the yard belong to the Union, don't they?"

"So we naturally inferred by this—

"Mr. Routzohn: We object to what he inferred.

"Mr. Burdell: It is simply to show his state of mind.

"The Court: Overruled.

"The Witness: We rather gathered from this that inasmuch as Mr. Ryan asked the question if the men in the yard are union labor men that if we didn't comply we would be picketed, or our men might be called out. That is merely an assumption, so far as that goes; that was the way we took that.

"The Court: Was anything further said?

"Mr. Burdell: Q. Anything further said at that meeting?

(Testimony of S. H. McNamar.)

"A. Well, yes. When it came to that point Mr. Symon said, 'Well, we won't buy anything from the North, any further material from the North until we take it up with you,' which seemed to be very satisfactory to the gentlemen present, and then I made the statement that we had already a car that was due most any time and it would be rolling in, and they made no comment on that, but the car did come in and we unloaded it."

Prior to that time I had been purchasing millwork from mills in the Northwest. The Albany Door Company in Oregon and the Central Door and Lumber Company who were working with the Albany Door Company, but had separate mills at that time, and [231] the McCleary Timber Company. Central Door and Lumber Company might sometimes be called the Central Door and Plywood Corporation. I think they did start to make plywood, we haven't done any business with them lately. I made the purchase from Mr. M. A. Peel in that company. After those conversations I did not continue to buy millwork from those companies nor from any company outside the Bay Area at that time. We did later, but it was sometime later that we did. Mr. Stewart is manager of our Oakland branch and purchases for that branch. We ordered a car of millwork from Mr. Woodson, he couldn't deliver it. The car of millwork ordered from Mr. Woodson was not delivered; I cancelled the order.

With reference to the millwork purchased from

(Testimony of S. H. McNamar.)

Central Door and Lumber Company or Central Door and Plywood Corporation, in Portland, the doors bore a Union Label. We also purchased sash from that company which did not bear a Union Label.

Cross-Examination

By Mr. Routzohn:

I have been with Symon Brothers since 1907; manager about ten (10) years. I had charge of purchases before I was manager, and since then as well. The business of Symon Brothers is handling all kinds of building materials and wrecking of buildings. The greater portion of our business is new material. I wouldn't call what we conduct a planing mill. We purchase lumber or fabricated doors and sashes and things of that kind and resell them. We purchase them open and glaze them there.

We had some sash and doors in October, 1939, in our yard in San Francisco that we had purchased from the North. That particular time they come from either the Albany Door Company or Central Plywood Company, Central Door and Lumber Company. Albany Door Company is in Albany, Oregon; Central Door and [232] Lumber Company is located right around Portland, Oregon. Sash and doors that were on hand at that time were not from McCleary Lumber Company; they came later. I don't think we had McCleary material during October, November and December; it was largely Al-

(Testimony of S. H. McNamar.)

bany Door Company. The sash came from the same places. It didn't bear the union label. The doors from Albany Door Company did bear the Union Label. The doors from Central Door Company did bear the Union Label.

I can't say what the wage scale is for millwork in San Francisco or what it was at that time. I don't know whether or not the wage scales of the Albany Door Company and the Central Door Company for the manufacture of those doors were lower than the current scale in San Francisco. That is what Mr. Helbing reported to me. I did not investigate to verify the statement, I wasn't particularly concerned about it. I had other troubles besides that. We are not still buying from those people. We are buying now largely from McCleary Timber Company, McCleary, Washington. Albany Door Company got into financial difficulty and had to close up, then combined the Central Door and Lumber Company and opened, but during that interim we got other connections. They quit manufacturing for a while, that is all I know about it. Since then we have been buying from McCleary Lumber Company and also now buy open sash from Pacific Manufacturing Company at Santa Clara. I think that sash bears the Union Label, I am not sure. Sash purchases from McCleary did not bear the Union Label; the doors from McCleary Lumber Company would.

I don't know whether the wage scales at the McCleary Lumber Company are lower than they are

(Testimony of S. H. McNamar.)

in San Francisco. I was told, just a general statement, that the mills in the North did; they didn't define any particular ones; that ~~all~~ the mills in the North paid a lower wage scale than the mills in [233] San Francisco; that was what they claimed, I don't know anything about that or whether that was correct or not; I never investigated it. We are getting doors only from McCleary; we haven't been picketed or anything of that kind.

Cross Examination

By Mr. Tobriner:

Mr. Rickett made no statement that he represented the Building Trades Council nor that he was authorized by the Building Trades Council to be there. I don't think he made any statement that he had been authorized by the Building Trades Council to be there. He made no statement to the effect that he would place any pickets around our store.

Re-Direct Examination

By Mr. Burdell:

I did not know and wasn't concerned whether the wage scales in the Northwest were lower or higher than they are here. I was only concerned with the purchases. I can't state definitely when we began purchases from McCleary Lumber Company, but it was in 1940.

After these conversations with Mr. Helbing, Mr.

(Testimony of S. H. McNamar.)

Symon and I didn't make any more purchases. We promised those gentlemen we wouldn't purchase any more until we took it up with them. It was quite well along in 1940 before we began purchasing from the McCleary Company; I couldn't say the month; I would say the first half of 1940.

Thereupon the following stipulation was read into the record by Mr. Howland:

"It is hereby stipulated by and among the parties to this case, first, that the defendant Lumber Products Association, Inc., is a corporation duly organized and incorporated in [234] November, 1938, under and by virtue of the laws of the State of California.

"2. Defendant Wood Products Company, Inc., is a corporation duly organized and incorporated in April, 1939, under the laws of the State of California.

"3. Defendant Commercial Fixture and Store Front Institute is a corporation duly organized and incorporated in January, 1939, under and by virtue of the laws of the State of California.

"4. The following defendants are and were during the period of time covered by the indictment corporations duly organized and incorporated under the laws of the State of California, that is to say:

Acme Manufacturing Co., Inc.;

Eureka Sash, Door & Molding Mills;

Boorman Lumber Co.;

Hill Lumber & Yardware Company;

Hogan Lumber Co.;
Loop Lumber & Mill Company;
Smith Lumber Company;
Tilden Lumber Company;
E. K. Wood Lumber Company;
Zenith Mill & Lumber Company;
Eureka Mill & Lumber Co.;
Mullen Manufacturing Company;
Mangrum, Holbrook & Elkus—

“Mr. Bacigalupi: Mangrum, Holbrook & Elkus was organized on July 2, 1937.

“Mr. Howland: And has been a corporation since that time.

“Mr. Bacigalupi: It was not incorporated during the period of the indictment—they were not a corporation during the period of the indictment,

“Mr. Howland: I understand. Fink & Schindler Co.; L. & E. Emanuel, Inc.; Braas & Kuhn Company; Pacific Manufacturing Co.; Redwood Manufacturers Co.

“5. That the defendants

United Brotherhood of Carpenter and
Joiners of America,

Bay Counties District Council of Carpenters,
San Francisco Building and Construction
Trades Council, [235]

Alameda County Building and Construction
Trades Council,

United Brotherhood of Carpenters and Joiners
of America, Millmen's Union No. 42,

United Brotherhood of Carpenters and Joiners
of America, Millmen's Union No. 550,

United Brotherhood of Carpenters and Joiners
of America, Millmen's Union No. 1956,

are and each of them is a voluntary unincorporated
association.

"6. That C. E. Stauffacher was president and
director of Fink & Shindler Co. from 1936 to 1940,
both inclusive.

"That Richard Kuhn was president of Braas &
Kuhn from 1936 to 1940, both inclusive.

"That John E. Mullen was president and director
of Mullen Manufacturing Co. from 1936 to 1940,
both inclusive.

"That Joseph L. Emanuel was president of L. &
E. Emanuel, Inc., from 1936 to 1940, both inclusive.

"That J. Gordon Ennes was secretary-manager
and director of Commercial Fixture and Store
Front Institute from January 19, 1939 to and
through the year 1940.

"That John E. Mullen was president and director
of Commercial Fixture and Store Front Institute
from January 19, 1939 through 1940.

"7. That the following defendants were, during
the entire period from 1936 to 1940, both inclusive,
doing business under the trade name set after their
respective names:

"Joseph J. Schmidt was doing business as Full-
Vue Fixture Company.

"George Randolph and Herman Sichel were do-
ing business as Exposition Woodworking Co.

"That Lee Roselyn was doing business as Uni-Built Fixture Company.

"That Henry A. Schulte was doing business as H. Schulte & Son.

"That Oscar H. Ostlund was doing business as Ostlund & [236] Johnson, from the date he started in business during the latter part of 1937 through the year 1940.

"That S. Kulcher was doing business as S. Kulcher & Co. during the period from 1936 to 1940, both inclusive.

"We have a further stipulation with counsel for the defendant Labor Union's to the following effect:

"That the defendant J. F. Cambiano was an organizer of the United Brotherhood of Carpenters & Joiners of America from May 3, 1937, up to the present time.

"That the defendant D. H. Ryan was Secretary of Bay Counties District Council of Carpenters from September, 1927, up till the present time.

"That defendant James Ricketts was business representative of the San Francisco Building & Construction Trades Council from November 1, 1936, to June 27, 1940.

"That defendant Charles Rowe was assistant business representative of the Alameda County Building & Construction Trades Council from March 28, 1939 to date.

"That defendant Charles Helbing was business agent of Millmen's Local Union 42 from August 1, 1935 to September 18, 1936, and from January 3, 1939 to July 2, 1940.

"That defendant D. J. Edwards was president of Millmen's Local Union 42 from July 1, 1936 to July 6, 1937.

"That defendant W. P. Kelly was president of Millmen's Local Union 42 from July 6, 1937 to July 8, 1938.

"That defendant H. Lidley was president of Millmen's Local Union 42 from August 23, 1938 to July 11, 1939.

"That defendant W. L. Wilcox was president of Millmen's Local Union 42 from July 11, 1939 to July 2, 1940, and was business agent of the same union from July 5, 1938 to July 11, 1939.

"That defendant Walter O'Leary was business agent of Millmen's Local Union 550 from July 11, 1935 to July 1, 1940. [237]

"That defendant M. D. Cicinato was president of Millmen's Local Union No. 550 from July 1, 1937 to July 1, 1938.

"That defendant J. P. Shelden was president of Millmen's Local Union No. 550 from July 11, 1935 to July 3, 1936.

"That defendant G. H. Irish was president of Millmen's Local Union No. 550 from July 1, 1939 to July 1, 1940.

"That defendant Otto W. Sammet was on the Negotiating Committee of Millmen's Local Union 42 from February 26, 1936 to September 21, 1936.

"That Emil H. Ovenberg was on the Negotiating Committee of Millmen's Local Union 550 from February 26, 1936 to September 21, 1936."

JAMES STEWART,

called as a witness in behalf of the plaintiff, was duly sworn and testified as follows:

I am manager for Symon Brothers Oakland Plant, located 22nd Avenue and East Fourteenth, Oakland. The business of that plant is wreckers and new and used building material supplies, including millwork. My duties are to buy all materials and operate the plant. I have held the position seven (7) years. I know Mr. Walter O'Leary; it was about 1938 when I first met him. I had a conversation with him in the early part or beginning of 1938, in my office. Mr. O'Leary and myself were present; I would say it was March or April. He came in and said, "I am O'Leary; I am Business Agent of the Mill Workers Union." At that time he came in with a union agreement to be signed and I told him I had no power to sign any agreement, that was something Mr. Symon would have to sign himself. One of the powers I did not have was to make any agreement binding the company. He left the agreement and said he would return for it, to have Mr. Symon sign it and he would pick it up. He returned a few [238] days later and picked up the agreement. I had had the agreement signed. I asked Mr. O'Leary a few questions on the contents of the agreement. One was in regard to bringing doors and windows and sash from the Northwest, where we had been accustomed to buy it. I asked him if the agreement

(Testimony of James Stewart.)

meant that we could not bring any more stuff from the Northwest, and he said, "Yes, it means just what it says there; you cannot buy from the Northwest any more, you have to buy it locally." I asked him where I had to buy locally and he said—he named five (5) different mills, "You can take your pick from those five."

The names of the five (5) mills were Pacific Manufacturing at Santa Clara; Redwood Manufacturing Company at Pittsburg; Western Sash and Door at Oakland; Eureka, here in San Francisco, and Boorman Lumber Company in Oakland. I asked Mr. O'Leary if I brought merchandise in that bore a Union Label, other than made here, what would happen. He told me they would picket the place, that we could not bring anything in that was not made in the five counties. That was all the conversation at the particular time.

Mr. O'Leary was in the habit of coming in the yard and going over the stuff about every month or six weeks, seeing if we had any merchandise in there that was without a Union Labor Label. On one particular occasion I had a conversation with him. I walked out into the yard and saw Mr. O'Leary and three other gentlemen and walked up and said, "What can we do for you?" He said, "I have got a tip that you have got some hot stock." It was the latter part of 1938, around November, just before the rainy season. He said he had heard we had hot stuff in the yard and he wanted to see

(Testimony of James Stewart.)

if we had it, and he had a number of other business agents from different unions out with him, in case he found it they would know what to do then. Nothing further was said; they did not find anything to my knowledge because nothing was done at that particular time. [239]

Prior to that time we had been purchasing our millwork from Central Sash and Door Company and Albany Sash and Door Company, in Oregon or Washington. I think Albany Sash and Door Company is in Oregon; we purchased from their salesman, Mr. Peel. Central Sash and Door and Plywood Company,—it might be Central Door and Plywood Company, is located in Oregon; we got it through the same salesman. We had been purchasing sash, windows and doors from those mill companies. I know the doors bore the Union Label; I do not think the sash bore the Union Label nor the windows; just the doors, as I remember. We did not continue to purchase from the Central Door and Plywood Company or the Albany Door and Sash Company. He said I could not do so; if I continued to purchase from them he would immediately picket the place, close us up on a picket line, that I had to buy from the five county mills that he designated. I did not purchase anything further from those companies. I do not recall the exact price paid for doors and sash from Central Door and Plywood Company, but the price list that was established we would get a discount on from

(Testimony of James Stewart.)

78 to 82 on sash and doors. After I ceased purchasing from those companies I checked around and tried to purchase doors and sash in Oakland. They only gave us five companies that he designated I could purchase from and they would only give us 50 per cent. discount off the same list, and I was not able to put an order on the market at such a price because any contractor could go in and get the same price. I went without a lot of it. We didn't cease dealing in any particular article; we had a big enough stock, but that stock dwindled down to nothing. We have recently made purchases of doors and sash from Pacific Manufacturing Company of Santa Clara.

"In addition to this conversation that you had with Mr. O'Leary did you have any further conversations at all with Mr. O'Leary? [240]

"A. One day I had placed an order through our buyer in San Francisco with an outfit to get in a lot of sash and doors so we could have a surplus stock, and he placed the order and told me that the mills would deliver it on such and such a date, and I received a telephone call stating that it had been heard that I had purchased merchandise coming in other than from the five counties.

"Q. Just a moment, do you recall when this telephone call occurred?

"A. In the morning, but not what date.

"Mr. Routzohn: We object unless this telephone call was with one of the defendants or somebody connected with the defendants.

(Testimony of James Stewart.)

"Mr. Burdell: I have not asked for the conversation.

"Q. Do you know who called?

"A. The party on the other end of the line said they were from the Mill Workers' Union on Webster Street, in Oakland—Mill Workers' Union, I won't say Webster street. He said that he represented the Mill Workers' Union and had understood that we had a car of sash—

"Mr. Routzohn: I object to that.

"The Court: Overruled.

"Mr. Routzohn: We are objecting on the ground that there is nothing there to show that it was somebody from the Union, it is merely a telephone conversation.

"The Court: Q. Was it a man who represented himself to be a representative of the Union?

"A. He did.

"The Court: Overruled.

"Mr. Burdell: Q. What was the conversation, Mr. Stewart?

"Mr. Routzohn: When?

"Mr. Burdell: Q. When did this telephone conversation occur?

"A. In the early part of 1939, when I ordered these through Mr. McNamar. [241]

"Q. Do you recall the month?

"A. No, I do not.

"Q. What was the conversation?

"A. This party called up and represented himself to me as someone from the Union in Oak-

(Testimony of James Stewart.)

land, and stated that they had heard we had placed an order with an out-of-the-five-counties mill, and if they came in they would immediately picket our place, and not to bring it in to save ourselves any trouble.

"Q. Was there any further conversation on the phone?

"A. Not with that party, except, well, I did say, 'What are you talking about?' And they said, 'You know what I am talking about.'

"Q. Is that all? A. That was all.

"Q. What did you do?

"A. I called up Mr. McNamar and told him to cancel this order.

"Mr. Routzohn: We object to what he did with Mr. McNamar.

"The Court: Overruled.

"Q. I told Mr. McNamar to cancel the order with the company that he had ordered the sash and doors, that the Union had heard of it and prohibited us from taking it or they would picket us.

"Mr. Routzohn: We ask that the conversation be stricken out and the jury instructed not to regard it, and to pay no attention to it.

"The Court: Denied."

Cross Examination

By Mr. Routzohn:

On that particular order in 1939, I had conversed with Mr. McNamar on it, and the salesman

(Testimony of James Stewart.)

that had taken the order did not give me the name of the mill. The order was placed with a Mr. Wixon, with the Nicolai Sash and Door Company. I thought it was Wixon, I may be mistaken. Mr. McNamar had placed the order. All I know is that Nicolai Sash and Door Company was located [242] somewhere in San Francisco. The order was to come up from some mill around Los Angeles; that is all the salesman would tell me. That did not go through because it was cancelled. It was not cancelled because it was a non-union mill. It was to bear the Union Label. I know it was to bear the Union Label because when I was talking to this man that I didn't know exactly how to spell his name, I asked that particular salesman and he said, "Yes." He told me that it would bear the Union Label.

I don't know what wage the Nicolai Sash & Door Company pays. The Nicolai Sash & Door Company is a San Francisco concern. It is a mill, but it was purchasing these doors which we were purchasing from a Los Angeles concern. I don't know what the wage scale was down there.

I do not personally have a copy of the agreement Mr. Symon signed. I imagine we may have one in the file in Oakland, or there may be one here. I am positive Mr. Symon did sign an agreement in the early part of 1938, and I delivered that signed agreement to Mr. O'Leary. I read over the agreement myself. There was a list of exemptions and there

(Testimony of James Stewart.)

was a list of materials that were not exempted in this agreement. There was not anything stated in that agreement particularly about the five counties. All I know is that Mr. O'Leary came in and told me I could purchase my sash, doors and windows from these five (5) mills he listed. He said there were five counties and he gave me the names of five different mills I could purchase from. It is one agreement we are talking about and that is supposed to be the 1938 agreement.

I did not know there was an award made by Board of Arbitration in 1938, fixing prices in a six-county district. I heard nothing about any arbitration as to a wage scale in 1938. I believe we had a copy of that contract. The copy was given back, signed by Mr. Symon, the other copy was retained [243] by us. I don't recall whether we still have it or not, it might have been thrown out. They were all typed copies. Mr. Symon signed both of them so I could give Mr. O'Leary one. I haven't looked for the copy; it should be in the office in Oakland.

Cross-Examination

By Mr. Faulkner:

I recall the incident I related of the proposed purchase from the Nicolai Door Company, that was the early part of 1939. To the best of my knowledge, the business of that company is a sash and door company, in San Francisco. I had no prior dealings with them and I had no direct dealings with them then.

(Testimony of James Stewart.)

My knowledge of where they got the merchandise *that supplied* was just that this salesman stated it was coming from a Los Angeles mill. This was the early part of 1939. We cancelled out the carload.

"Mr. Burdell: If the Court please, at this time I desire to offer in evidence the minutes of Millmen's Union No. 42 of November 14, 1939. That is Government's Exhibit for identification No. 6.

"Mr. Routzohn: If the Court please, we would like to have an understanding and a stipulation in connection with the offering of the minutes, and that is that the Government produce these minutes and offer them as a whole, and then the Government will be permitted to read into the record and to the jury as much out of those minutes as it desires to read, granting to us the privilege to also read at the same time any excerpts from the minutes that we may desire to read into the record before the jury.

"The Court: I thought that was understood.

"Mr. Faulkner: That related solely to the minutes of the corporations, which were offered only against the corporations. [244]

"The Court: Well, I think it is proper you should have a stipulation of that kind.

"Mr. Burdell: Well, of course, subject to the usual objections with regard to relevancy.

"The Court: Yes.

"Mr. Burdell: And declarations.

"The Court: Yes. Well, both sides are subject to any objection anybody wishes to make concerning them.

"Mr. Faulkner: Well, we thought the minutes, your Honor, show a course of conduct not over a period of time mentioned in the indictment.

"The Court: Let's not waste time in arguing over this. We are moving very slowly in this case. We should move faster. There isn't any reason why those minutes should not be permitted in evidence. There isn't any reason the Government should not read from any minutes such portion that it wishes to read to the jury, and I can't see any reason why the defense likewise should not read such portions as they desire. That is subject to any objection.

"Mr. Faulkner: We would like to make this general objection to those minutes——

"The Court: Well, nothing has been offered yet.

"Mr. Faulkner: He offered the minutes of November——

"The Court: Very well.

"Mr. Faulkner: Our objections, your Honor, to the minutes are that they are not the minutes that are required to be kept by a statute, and only the minutes of a union, they are not the act or declaration of a conspirator during the course of a conspiracy. They are, therefore, hearsay as to the defendants, and they purport to show the opinion and conclusion of a secretary of what happened in his presence and it deprives the defendants who are not members of the union the right of being [245] confronted by witnesses and the right of cross examination. It is hearsay as to them in the event it is offered as to us.

"The Court: You have stated your objection. Have you finished it?

"Mr. Faulkner: Yes. Hearsay.

"The Court: Overruled. It is understood that the minutes you are offering now in evidence, the entire minute book.

"Mr. Burdell: Yes.

"The Court: Admitted in evidence. I understand you are going to read certain portions?

"Mr. Burdell: That's right.

"The Court: And if you do wish to read certain portions, you may do so.

"Mr. Routzohn: May I reserve the right to read them at some subsequent time before the Government rests, your Honor?

"The Court: Yes.

("The minutes of Local 42 were marked "U. S. Exhibit No. 6.")

"Mr. Faulkner: Our objection may go to every minute read—

"The Court: Yes.

"Mr. Burdell: I am reading from the minutes of November 14, 1939.

"The Court: What page?

"Mr. Burdell: These pages are not numbered, your Honor. I am reading from the second page of the November 14, 1939, minutes.

"The Court: What organization or association?

"Mr. Burdell: Millmen's Local No. 42.

"The Court: Proceed.

"Mr. Burdell: 'Beronio Lumber Co. has order for 265,000 feet of T and G for the Cow Palace. Told all parties [246] concerned this material will have to be run in San Francisco. Brother Kelly stated Symon Bros. Wreckers received two carloads of trim."

"Now, if the Court please, I desire to read from the minutes of the meeting of November 21, 1939;

"B. A. Helbing: Report saying to hold the 260,000 feet of 2 by 6 T and G for the Cow Palace. Have been contacting Sacramento in regard to this work. Case of Brother Carbone before Industrial Accident Commission; know by Saturday the amount the brother is to receive. Reported on the State Teachers College. P. W. A. money, and may take many years to build this college. Brother Kelly stated bids on the Outer Mission School were thrown out and the new bids will be opened November 29, 1939."

"Mr. Faulkner: I ask that all go out as not material.

"The Court: Denied.

"Mr. Burdell: If the Court please, I desire to read the minutes of November 28, 1939:

"B. A. Helbing reported he notified the Hobbs-Wall Company that the two brothers working there will have to receive the scale. Carload of millwork for Smith in Daly City and Nelson on Ocean Avenue without the label. Smith agreed to go along. Buckley received about 15,000 feet of molding from

a plant in San Jose without the label. Told to send this stuff back or have it rerun. Local No. 262 was notified and placed a picket on this job. Symon Bros. Wreckers received two earloads of unfair material. Asked these people to go along with the program and refused. Recommends that Symons be placed on the unfair list."

"I am still reading from the minutes of November 28, but the next page:

"'Moved and seconded'—that should be 'M&S. Symons be [247] placed on the unfair list. Carried. Secretary to notify District Council.'

"Now, if the Court please, I desire to read from the minutes of December 5, 1939:

"'Building Trades Council Delegate reported Symon Bros. will be cited to appear before the Executive Board. Executive Board Brother Westby stated about Symon Bros. Wreckers. B. A. Helbing reported the case of Hobbs-Wall was before the Conference Board and these brothers have worked for these people ten or fifteen years.'

"That is all I desire to read at this time, your Honor.

"Mr. Faulkner: I move to strike it all out, your Honor, as immaterial.

"The Court: Denied."

Thereupon the 1936 contract was received in evidence, marked "U. S. Exhibit 131", with stipulations that the signatures were genuine and the 1938 was

received in evidence, marked "Exhibit U. S. 132", with the same stipulation.

Thereupon Mr. Burdell read the 1936 contract, "Exhibit 132", as follows:

"Mr. Burdell: 'Employer-Employee Agreement of Wages, Hours and Working Conditions.

" '1. This Agreement is a voluntary Agreement entered into in good faith by all parties who stipulate that they have full authority to bind themselves or their organizations to the term hereof.

" '2. On and after June 28, 1936, the minimum wage scale for Journeymen Cabinet Makers, Bench Hands and Millmen employed in the operation of woodworking machinery will be Ninety-two and one-half ($92\frac{1}{2}c$) cents per hour, except in the manufacture of stock sash and doors, in the manufacture of which the minimum wage scale of Eighty-two and one-half ($82\frac{1}{2}c$) cents per hour will apply. Stock sash and doors shall consist of such items [248] as are listed as stock by the Northern California Wholesale Sash and Door Association.

" 'On and after March 15, 1937 the above mentioned minimum wage scale will be One (\$1.00) Dollar per hour and Ninety (90c) cents per hour respectively.

" '3. Eight hours shall constitute a regular work day. The regular work day shall be between 8:00 A. M. and 5:00 P. M. Five (5) days shall constitute a regular working week from Monday of Friday inclusive.

“4. The rate of wage for overtime work shall be as follows: For the first four hours work after the first eight hours work, time and one-half. All overtime work thereafter shall be paid for at the rate of double time. Work on Saturdays, Sundays and holidays from 12 midnight of the preceding day shall be paid for at the rate of double time, except that work on Saturday from 8:00 A. M. to 12:00 M. shall be paid for at the rate of time and one-half.

“Recognized Holidays are New Year's Day, Decoration Day, Fourth of July, Labor Day, Admission Day, Thanksgiving Day and Christmas.

“5. When two (2) shifts are worked in any twenty-four (24) hour period, straight time shall be paid. When three (3) shifts are worked eight (8) hours shall be paid for seven (7) hours work.

“6. Working foremen or working Superintendents shall become members of the Union.

“7. Employers or Firm Members, that is, those having direct interest in the business and working with tools of the trade shall become members of the Union, excepting that any firm may have one (1) member of the firm working with the tools not a member of the Union.

“8. An apprentice shall be not less than eighteen (18) [249] years of age and not over twenty-two (22) years of age when starting his apprenticeship. He shall undergo a course of training for four (4) years.

“The minimum rate of wage shall be:

	per diem
For first three months	\$2.00
After three months	2.50
After six months	3.00
After twelve months	3.50
After eighteen months	4.00
After twenty-four months	4.50
After thirty months	5.00
After thirty-six months	6.00
After forty-two months	7.00
After forty-eight months	Journeymen's Rate

“9. An apprentice, after having served an apprenticeship of two (2) months shall become a member of the Union.

“10. The employment of apprentices shall not exceed one (1) apprentice to every four (4) or major fraction thereof of Journeymen Millmen and Cabinet Makers combined. Handicapped workers shall not be included in this computation. In any event, the number of apprentices, at the option of the Employer, may be at the above ratio when based on the number of journeymen employed during the preceding twelve months period.

“11. There shall be no limitation of the Employer as to whom he shall employ or discharge, excepting that any working Foreman, Working Superintendent, Journeyman Millman or Cabinet Maker employed shall be or shall within thirty (30)

days, and apprentices within two (2) months, become members of the Millmen's or Carpenters' Union.

"12. A person who is incapacitated by age, physical or mental handicaps, or other infirmities, may be employed at an hourly rate of wage below the minimum established by this Agreement, provided he shall first have obtained a written dispensation from his Union.

"13. A person having temporary disabilities may be [250] employed at an hourly rate of wage below the minimum established by this Agreement, provided he shall first have obtained a written dispensation from his Union.

"14. Millwright work, consisting of installing of additional equipment and the maintenance of equipment, may be done at the convenience of the employer. The rate of wage for such work shall be the regular rate of wage of employees when employed on production, except that the rate of wage shall be the straight time rate without regard to the period or length of time employed on such millwright work or the day.

"15. The Shop Steward may make himself known to the Employer.

"16. In the interest of standardization of rates of wages and working conditions, it is agreed that no material will be purchased from, and no work will be done on any material or articles that has had any operation performed on same by Saw Mills, Mills

or Cabinet Shops, or their distributors that do not conform to the rates of wage and working conditions of this Agreement. The purchase of and the working of the following products is excepted:

•• Dowels

Panel Stock

Stock Panel

Veneers.

Machine Carved, Pressed or

Embossed Moldings

Pine, Redwood and Philippine

Mahogany Doors

1 Panel

10 Light or French

5 Cross Panel

1 Light Panel

1 Light 3 Panel

6 Light 6 Panel

Pine Garage Doors

2 Light Windows

Lumber, rough or surfaced

Sheathing surfaced

Flooring [251]

Siding and Clapboards

Stepping

T & G

•• Nothing herein is to be interpreted as preventing the entire production and sale of any articles in its completed state to any buyer. Nothing herein is to be interpreted as to in any way interfere with any

business of the Federal Government, or that of an inter-state common carrier, or any regulations of the Federal Trade Commission, or the Sherman Anti-Trust Laws.

•••17. No Millman or Cabinet Maker, a member of the Millmen's Union shall work in any Cabinet Shop, Planing Mill or elsewhere in the City and County of San Francisco, or in the Counties of Alameda, Contra Costa, Marin or San Mateo in the capacity of a Millman, Cabinet Maker or Carpenter, unless the Planing Mill or Cabinet Shop in which he is working be entitled to use the Union Label, or if working as a carpenter, the items he erects or installs be the products of a Planing Mill or Cabinet Shop entitled to use the Union Label.

•••18. When any Cabinet Maker, Bench Hand or Millman, performs any work at the building site, the minimum scale of wages and other conditions shall conform to the Carpenters' scale as set up by the United Brotherhood of Carpenters and Joiners of America. Under any circumstances, the minimum scale paid for such outside work shall not be less than the minimum shop scale.

•••19. The Union shall advise the Trade Associations of the Counties of San Francisco, Alameda, Contra Costa, Marin or San Mateo parties to this Agreement, of the proposed issuing of all Union Stamps or Labels prior to issuing same in the Trade Associations' respective Counties.

“20. In order to bring about general recognition of these ‘Wages, Hours & Working Conditions’, an Employer-Employees [252] Bay Counties Wood Products Labor Conference Committee shall be set up, consisting of eight (8) members, four (4) to be appointed by the Employers and four (4) to be appointed by the Employees, who shall:

- (a) Establish the general recognition and enforce the wages, hours and working conditions of this Agreement.
- (b) Hear and adjust disputes or differences that may arise in the enforcement or interpretation of this Agreement.
- (c) Promote the mutual interests of the parties to this Agreement, and the Building Industry generally.

“21. Seven (7) shall constitute a quorum to render a decision provided at least three (3) representing Employees shall be present.

“22. A decision may be rendered and become effective upon a majority vote, provided that no less than three (3) representatives of the Employers and three (3) representatives of the Employees vote with the majority.

“23. It is agreed that pending the decision of the Committee, neither party to this Agreement will take any action that will in any way delay or interrupt the orderly conduct of the business interests herein represented.

“24. This Agreement shall remain in effect for a period not less than two (2) years from June 15,

1936, and shall continue to remain in full force and effect thereafter. It shall be subject to change, modification or termination after the above period by either party upon sixty (60) days notice being served in writing upon the other party, and further excepting that the period of two (2) years may be extended by mutual agreement. [253]

“25. The work in progress and work for which contracts have been entered into or proposals submitted prior to June 27, 1936, shall be completed at the wage rates existing in plants at that time. This work is to be certified by a Committee having one (1) representative each for the respective Employers Associations and Employees.

This Committee is hereby authorized when they deem it advisable, and where agreeable to the specific shop, to determine a date on which the new rate is to become effective, or to determine the number of man hours that may be employed under the old rate before the new rate becomes effective.

“26. Business Agents of the Millmen's Union shall have free access to all shops during working hours at their own risk.

Dated: San Francisco, California, Sept. 21, 1936.

“UNITED BROTHERHOOD OF JOINERS &
CARPENTERS OF AMERICA

MILLMEN'S UNION NO. 42 and 550

WILLIAM P. KELLY

EMIL H. OVENBERG.

OTTO W. SAMMET.

W. C. O'LEARY

**BAY COUNTIES DISTRICT COUNCIL
OF CARPENTERS**

D. H. RYAN

**LUMBER PRODUCTS ASSOCIATION
OF SAN FRANCISCO**

J. G. HART

**EAST BAY MILL OWNERS
ASSOCIATION**

D. X. EDWARDS

BUILT IN FIXTURE MANUFACTURERS

.....
**CABINET MANUFACTURERS INSTI-
TUTE OF CALIFORNIA,
NORTHERN DIVISION**

J. G. ENNES, Mgr.' "

Thereupon Mr. Burdell read from the Agreement commonly referred to as the 1938 Contract, "Government's Exhibit 132", as follows: [254]

"Mr. Burdell: This Government's Exhibit 132: 'Employer-Employees' Agreement of Wages, Hours and Working Conditions.

"1. This Agreement is a negotiated and arbitrated Agreement entered into in good faith by all parties who are signatories hereto and who stipulate that they have full authority to bind their organizations to the terms hereof.

"2. It is fitting that the wording of the Arbitration Board be here quoted and its purpose and intent be and is made a part of this Agreement:

'Maintenance of Fair Labor Conditions: It is the unanimous decision of the Arbitration Board that the new agreement should include a provision to the effect that it is deemed to be for the best interest of the community, in aid of the maintenance of fair working conditions, that the parties to the agreement adopt and abide by the business policy of refusing to handle any material coming from any mill or cabinet shop that is or shall be, working contrary to the conditions of said agreement.'

"I desire now to read paragraph 17:

"'In the interest of providing productive employment, it is agreed that no material will be purchased from, and no work will be done on any material or article that has had any operation performed on same by Saw Mills, Mills or Cabinet Shops, or their distributors that do not conform to the rates of wage and working conditions of this Agreement. The purchase, working and sales of the following products is expected:

'Dowels, Pannel Stock, Stock Plywood Pannel, Veneers, Machine Carved, Pressed or Embossed Mouldings, Lumber, rough or surfaced, Sheathing surfaced, Rustic and Clapboard, Stepping, Flooring 13/16 x 3—13/16 x 4—13/16 x 6 11/8 x 4, Douglas Fir—T&GV or T&GV&CV—3/8 x 4 3/4 x 4—5/8 x 4 3/4 x 6, Redwood T&GVIS—Bead 1S 3/4 x 4—3/4 x 6.

"'18. The purchase and sale of the following products is excepted: Pine, Redwood & Philippine

Mahogany Doors, 1 Pannel, 10 Light or French,
5 Cross Pannel, 1 Light 1 Pannel, 1 Light 3 Pannel,
Pine Garage Doors—6 Light 6 Pannel.

“Nothing herein is to be interpreted as preventing the entire production and sale of any article in its completed [255] state to any Buyer. Nothing herein is to be interpreted as to in any way interfere with any business of the Federal Government, or that of an inter-state common carrier, or any regulations of the Federal Trade Commission or the Sherman Anti-Trust Laws.’

“Paragraph 28: ‘This Agreement shall remain in effect for a period from June 15, 1938 to May 1, 1939, and shall continue to remain in full force and effect thereafter. It shall be subject to change, modification or termination after May 1 of any year, by either party upon notice being served in writing upon the other party between the period of January 1 and February 1 of any year, and further excepting that the period of June 15, 1938 to May 1, 1939, may at any time be extended by the mutual consent of all the signatories hereto.’

“It is dated, San Francisco, California; the date line is blank. It is signed by:

United Brotherhood of Carpenters & Joiners of America

Millmen's Union No. 42, William P. Kelly,
W. L. Wilcox, A. M. Edwards;

United Brotherhood of Carpenters & Joiners of America

Millmen's Union No. 550, W. C. O'Leary,
Emil H. Ovenberg, C. H. Irish;
Bay Counties District Council of Carpenters,
D. H. Ryan;

Lumber Products Association Inc., Carl War-
den, J. A. Hart;

Cabinet Manufacturers Institute of Califor-
nia Inc., Northern Division, J. G. Ennes, Man-
ager;

Stair Builders Association San Francisco
Bay Counties, by P. O. Lind."

Thereupon Exhibit for identification 114-17 was
received in evidence with the stipulation as to Mr.
Ennes' signature and marked "U. S. Exhibit No.
133."

"Mr. Burdell: I desire to read the letter. It is
on the letterhead of the Cabinet Manufacturers In-
stitute of [256] California, Northern Division, 74
New Montgomery Street, San Francisco, California,
Telephone Exbrook 5382.

"December 19, 1938

United Brotherhood of Carpenters & Joiners
of America

Millmen's Union No. 42,
200 Guerrero Street,
San Francisco

Gentlemen:

"Our shops are operated under the terms of
a negotiated and arbitrated Agreement which

Agreement was subsequently modified at the suggestion of your International Officers, your Local representatives being present, and concurred in by us in the following language:

“ ‘Agreement Modifying Employer-Employee Agreement of Wages, Hours & Working Conditions

“ ‘The memorandum as to payment of wages, established by arbitration effective next Pay Day, dated August, 1938 is hereby made void.

“ ‘The rate of wages as established by Employer-Employee Agreement effective June 15, 1938, is hereby modified as follows:

“ ‘Effective October 18, 1938, inclusive, wherever the Journeyman rate of wage of One Dollar and twelve and one-half ($\$1.12\frac{1}{2}$) cents per hour and One Dollar ($\$1.00$) per hour appears, said rates shall be One Dollar and Six and one-quarter ($\$1.06\frac{1}{4}$) cents per hour and Ninety-six and one-quarter ($.96\frac{1}{4}$) cents per hour respectively.

“ ‘The rates of wage of Apprentices shall be changed to:

(a) In the first year:

for the first 3 months	\$2.00
for the second 3 months	2.50
for the last 6 months	3.00

(b) In the second year:

for the first 6 months	3.50
for the last 6 months	4.25

- (c) In the third year:
for the first 6 months \$5.00
for the last 6 months 5.75
- (d) In the fourth year:
for the first 6 months 6.50
for the last 6 months 7.50
- (e) After the fourth year the Journeyman's minimum rate of wage shall apply.

“Paragraph 17 is changed by mutual agreement to read as follows:

“17. In the interest of providing employment, it is agreed that no material will be purchased from, and no work will be done on any material or article that has been made under conditions unfair to members of the United Brotherhood of Carpenters and Joiners of America, or Employers of members of the United Brotherhood of Carpenters and Joiners of America signators hereto.

The purchase working and sales of the following products is excepted:

Dowels, Flooring 13/16 x 3—13/16 x 4, 13/16 x 6—11/8 x 4, Fir-T&GV or T&GV&CV 3/8 x 4—3/4 x 45/8 x 4—Bead 1S 3/4 x 4 T&GVIS—Bead 1S 3/4 x 43/4 x 6, Pannel Stock, Stock Plywood, Pannel, Veneers; Machine Carved, pressed or Embossed Mouldings Redwood Lumber, rough or surfaced, Rustic & Clapboard, Stepping, Sheathing surfaced.

“The purchase and sale of the following products is excepted:

“Pine, Redwood and Philippine Mahogany Doors.

1 Pannel, 10 Light or French, 5 Cross Pannel, 1 Light 1 Pannel, 1 Light 3 Pannel, Pine Garage Doors—6 Light 6 Pannel.

“ ‘Nothing herein is to be interpreted as preventing the entire production and sale of any article in its completed state to any Buyer. Nothing herein is to be interpreted as to in any way interfere with any business of the Federal Government, or that of any inter-state common carrier, or any regulations of [258] the Federal Trade Commission, or the Sherman Anti-Trust Laws.

“ ‘With reference to the San Francisco signators: Such pay-rolls in the hands of Employers over and above such offsets claimed under the terms of the award are to be given to the Union representative upon demand and receipt.

“ ‘Unendorsed check is to be given to the Union representative upon endorsement or written order of the Employee in whose name the check is drawn and receipt by the Union.

“ ‘Such unsatisfied offsets due the Employer that exist after the application of checks endorsed to the Employer shall be paid by the Union not later than the completion of the job on which the offset is due.

“ ‘It is to be confirmed by the International of the United Brotherhood of Carpenters and Joiners of America that they will not approve any agreements entered into between the Employers and the local Unions under their jurisdiction in the Counties of San Francisco, Alameda, Contra Costa, Marin, San Mateo and Santa Clara unless said agree-

ments be uniform with respect to rates of wage, hours and working conditions.'

"In spite of the affixed signatures and statements of those who asserted and we believed to represent you, we have heard that there exists some question as to **Organized Labor** having followed the proper procedure with respect to the contracts.

"We are hopeful that the long established confidence we have in your organization and its officers will continue to obtain. So there can be no misunderstanding arise, please advise us in the premises.

Very truly yours,

**CABINET MANUFACTURERS
INSTITUTE OF CALIFOR-
NIA, INC., NORTHERN DI-
VISION**

By **J. G. ENNES, Manager
LUMBER PRODUCTS ASSO-
CIATION INC.**

By **H. W. GAETJEN.' "** [259]

CLEMENTINE S. RENNIE,

called as a witness in behalf of the plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Burdell:

I am retired; my previous occupation was Public Stenographer with office at 407 Call Building. I

(Testimony of Clementine S. Rennie.)

know Mr. John Gordon Ennes. I met him in the course of my work and did work for him. He had an office on the same floor of the Call Building. I worked for him between 1935 and 1939, I think the last was in February, 1939, it was mostly copy work. I typed Government Exhibits No. 134 for identification for Mr. Ennes at his direction. It was received in evidence as "U S. Exhibit 134" over the objection that it was hearsay, incompetent, irrelevant and immaterial.

Cross-Examination

By Mr. Faulkner:

I cannot state definitely when the paper was typewritten; it was during the period that I worked for Mr. Ennes. I remember it was something I typed for him.

HAWLEY E. STRONG,

called as a witness in behalf of the plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Clark:

I am a Public Accountant; I work for Pacific Coast Labor Bureau in the auditing department; I audit labor union accounts and make analysis of the account of the employers' books. [260] I did auditing work for Millmen's Union No. 42 in the Fall of 1936.

(Testimony of Hawley E. Strong.)

"Q. Tell the jury the occasion of your being employed through the Pacific Coast Labor Bureau to do auditing.

"Mr. Faulkner: We object as hearsay and not within the issues of the case; incompetent, irrelevant and immaterial.

"The Court: Overruled.

"The Witness: May I ask for the question?

"The Court: Read the question.

(Question read.)

"Mr. Faulkner: And hearsay.

"A. Well, the unions and the employers had a contract which was entered into and which gave an increase in the rate of wages as of a certain date, but it was further provided that any work that an employer had that he had signed up for on that date was to be finished at the old rate of wages, which meant the effective date of the agreement would be different in every plant, probably, and it was therefore necessary to determine the work that an employer had on hand. I was called in to examine the books of the employers to determine the work that was on hand and to estimate how long their work would take."

I was called by Mr. Edwards, the business agent of the Union. Mr. Edwards explained what the type of work would be; to go around to the different employers and make this check that I have described. Mr. Edwards was referred to as "Shorty"; Al, I think was the first name. I received a copy

(Testimony of Hawley E. Strong.)

of the agreement under which we were working, document marked "135, for identification", is the document. Thereupon the agreement was received in evidence, marked "U. S. Exhibit No. 135". We started the work of checking the various mills. Mr. Edwards was present for the Union, and Mr. Ennes for Cabinet Employers Association. I know Mr. Ennes, I see him sitting yonder. We called on the [261] employers and asked for orders they had on hand, effective this particular date; and checked the orders and determined how long it would take to complete them. Mr. Ennes looked out for the interest of the employers. He would introduce me as the auditor employed by the Union with the acceptance of the Employers Association, to check the books against the date of the contract.

"U. S. Exhibit No. 136" is an accurate list of the Cabinet Makers upon whom I called and was made about the time I made the calls with Mr. Ennes. I think that we called with Mr. Ennes on all, with the exception of the first one, Fenesky. I haven't a distinct recollection. Mr. Ennes was there at Brandlein; I have in the case of Royal Show Case Company.

The following are companies, reading from the list, that I called on in the presence of Mr. Ennes:

"A. H. Schulke & Son, Exposition Wood-working Company, Brandlein, William Bateman, Ostlund & Johnson, Ful-Vue Fixture Company, Mullen Manufacturing Company,

(Testimony of Hawley E. Strong.)


Mangrum-Holbrook Company, Royal Showcase Company, Fink & Schindler, L. & E. Emanuel, Erik G. Ernstam—and Brass & Kuhn.”

I omitted the first name from the list, that was the one that Mr. Ennes did not attend. When I called the employers produced their records that we were interested in for the certain date, and we made our calculations from those jobs. Mr. Ennes and Mr. Edwards looked out for the interests of their respective groups as to dates and amount of money involved to complete those orders. They remained with me most of the time. I again checked records of employers in San Francisco at the instance of Local 42 and the same Mr. Edwards in the Fall of 1938.

Government's Exhibit No. 134 is a typewritten list of the mills furnished, I believe, by Mr. Edwards. I called on each employer on the list, which reads as follows: William Bateman, [262]

“Braas & Kuhn Company, Brandlein & Company, L. & E. Emanuel, Inc., Exposition Woodworking Company, Fink & Schindler Company, Ful-Vue Fixture Company, S. Kulcher Company, Mangrum, Holbrook & Elkus, Mullen Manufacturing Company, Ostlund & Johnson, Royal Showcase and Fixture Company, H. Schulte & Son, Unit Bilt Fixture Company.”

That is the entire list of names that is on the exhibit. We also called on employers who were mem-



(Testimony of Hawley E. Strong.)

bers. of Lumber Products Association. I have a list of that group furnished by Mr. Edwards or his office. List marked "U. S. Exhibit No. 137" was then introduced in evidence over the objection that it was incompetent, irrelevant, immaterial and hearsay as to defendants.

We called on all the employers on that list, reading: "Liberty Mill, Sage & Wilder, Central Mill and Cabinet Shop, Anderson Brothers, California Mill, Eureka Sash, Door and Molding Mill, J. A. Hart Mill and Lumber Company, Herring & Nutting, H. Karp & Son, Warden Brothers, Portman Planing Mill, Erickson & Wagner, Empire Mill, Button's Planing Mill."

We followed the same routine in 1938 as described in 1936, except in this case, instead of finishing the work they had, the wage increase was given immediately and the Union refunded to the Employers to cover amount of work that was done after that date that they had on hand. Mr. Ennes did not go with me in 1938, Mr. Edwards went with me part of the time and Mr. Wilcox, who is in the Court room part of the time. I made my report of the audit for 1938 to Millmen's Union No. 42. Government's "Exhibit No. 138", for identification, is a copy of the report made out by myself. I think that is the final report.

"Mr. Clark: We offer it, your Honor.

"Mr. Faulkner: We object as incompetent, irrelevant [263] and immaterial, and upon the further

(Testimony of Hawley E. Strong.)

ground the proper foundation has not been laid in this: that that purports to be a resume of books and records, and under the ruling of the Circuit Court in the Wilkie case, a resume is admissible in evidence only if the books from which is prepared are first introduced in evidence.

"The Court: Overruled.

"Mr. Faulkner: Hearsay as to the defendants.

"The Court: Overruled.

(The audit report was marked "U. S. Exhibit No. 138.")

"Mr. Clark: Exhibit No. 138 is dated:

"November 3, 1938

**"TO THE OFFICERS AND MEMBERS
OF MILLMEN'S UNION LOCAL NO. 42:**

"We have audited the employers claims for protection on old work in accordance with the agreement between the Cabinet Manufacturers Institute of California, Northern Division and Lumber Products Association, Inc. and the Bay Counties, District Council of Carpenters, Millmen's Union No. 42 of San Francisco and Millmen's Union No. 550 of Oakland and herewith submit out report.

"Summary

Number of Employers Audited

.68

Amount of Work on which Protection Claimed by Employers

\$1,007,320.69

Amount of Reimbursement

(Testimony of Hawley E. Strong.)

Claimed by Employers based on Old Work	\$35,104.71
Amount of Reimbursement Agreed to by Union Following Audit	19,890.69
Amount of Reimbursements Claimed Still in Dispute	2,033.51

The attached statements listing the amounts for each employer in detail have been verified by us and show correctly, in our opinion, the amounts due employers as reimbursement under the terms of the agreement. [264]

"We have indicated by a star (*) opposite the amount of reimbursement agreed to where work is still uncompleted. We recommend that a representative of the Union verify the completion of unfinished jobs of all employers so marked before final payment or release of funds is made by the Union.

Respectfully submitted,

H. E. STRONG,

Public Accountant

For: PACIFIC COAST LABOR
BUREAU.' "

Attached to such exhibit are tabulations which were read to the jury by Mr. Faulkner, listing names of some sixty-eight (68) employers, and with columns in each instance showing amount of work on which each employer claimed protection, the amount of reimbursement claimed by employers, based on old work, and the amount of reimburse-

(Testimony of Hawley E. Strong.)

ment agreed to by the Union, following the audit; and at the end the amount of reimbursements claimed by employers in dispute. The employers listed on Exhibit 134 gave me access to their files in the year 1938.

I examined the records with respect to the work they had accrued prior to the date of the contract, and from that examination made the report just read. I did further work in 1938 for the Union. I made an audit for the Conference Committee covering things they had handled in connection with the contract they had. I believe Mr. Kelly, whom I see in the Court room, gave me a copy of this contract.

Thereupon the document was marked 139 for identification and introduced in evidence as "Exhibit 139" over objection as to its materiality, irrelevancy and competency.

This was a supplemental agreement so that the work already done on the first agreement was ineffective. We had to go back and recheck because the amount of the wage had been reduced by the supplemental agreement. [265].

Cross-Examination

By Mr. Faulkner:

I believe it was in the month of September, 1936, that I received directions to make certain calculations under Exhibit No. 135. Those directions came through Mr. Edwards. I read a part of this agree-

(Testimony of Hawley E. Strong.)

ment with care in connection with the audit I subsequently made. It was more a matter of arriving at the correct figure than a dispute. I was directed by someone connected with the Union to make the Audit and given all the information by the Union to make it. Paragraph 25 of the agreement is the paragraph under which I would make the calculations. Under the provisions of the agreement there was a date at which the compensation of employers changed and the change was not to affect existing contracts.

Exhibit 136 should be the list of cabinet shops I called on in 1936, and was a list prepared by me in 1936. It is a list of cabinet shops called on in connection with the calculations made under paragraph 25 of Exhibit 135. There are about fourteen (14) names here. In 1936 I probably called on sixty (60) or seventy (70) employers and a similar number in 1938; I have not the exact numbers in mind.

Mr. Ennes accompanied me only to cabinet shops, not when I called on the men who would come under the head of Millmen. He did not accompany me when I called upon men engaged in the milling business in Oakland. My remembrance is that in 1936 Mr. Ennes went at least once to each of these shops when I first went. To the best of my knowledge he went on the first visit to all of them, on this list heretofore exhibited. That is my impression and best memory. I have a pretty clear recollection he did not call on George Fensky; but to the best of my recollection he called on the others with the possible exception of Erik G. Ernstam. [266]

(Testimony of Hawley E. Strong.)

I knew when I made the audit in 1936 there was a group of employers who came under the head of Lumber Products Association. Mr. Ennes did not accompany me to that group. I do not think I made any calls in Oakland in 1936. I made one on Kulcher and Co. in 1938.

I am of the impression that Exhibit No. 139 was not the first agreement that we worked under. This agreement did not go into effect until October, 1938, and we started work in August, 1938; both of the documents were not handed to me. I believe the second part of Government's Exhibit 139, consisting of some five (5) pages, was the one. These are the two (2) papers, the identical documents, that came out of my possession. These papers came out of my file. Exhibit 134 came into my possession in August, 1938, from Mr. Edwards, I believe. My work in 1938 culminated in a report dated November 3, 1938.

During the period I called on various employers Mr. Ennes did not accompany me to any employer. I don't remember if I had any contact with Mr. Ennes in connection with that audit. In 1938 I called on all the cabinet shops listed on Exhibit 134. I could not tell how many of the sixty-eight (68) employers audited were cabinet shops. I called on sixty-eight (68) employers in 1938 to make a calculation under a formula that flowed from the contract; I used the same contract in each instance. I know that I called on cabinet shops; I also called on mills banded under the name of Lumber Products Association.

(Testimony of Hawley E. Strong.)

Exhibit 137 was a typewritten list handed to me when I first went to work on the job in 1938. It contained sixteen (16) members of the Lumber Products Association. I made the calls with a representative of the Unions, who directed our visits. I got the names of the thirty-eight (38) additional employers in 1938 from the business agent of the Millmen's Union. None of those thirty-eight (38) additional people was in Oakland. I believe [267] it is true that there were at least thirty-eight (38) persons, firms or corporations in San Francisco not listed on either Exhibits 134 or 137. The same basis and the same contract was used to calculate for the employers listed in 134 and 137 and the thirty-eight (38) not listed.

Exhibit 8, for identification, being the minutes of Local 42, were introduced in evidence and marked "U. S. Exhibit No. 8", over the renewed objection of the employer defendants that the minutes of the Unions would be hearsay as to them, and not acts or declarations made pursuant to a conspiracy either charged in the indictment or disclosed from the evidence and no foundation.

By Mr. Clark:

"I am reading from the minutes of Local Union 42 under the date of August 9, 1938:—This excerpt is on the second page of the longhand minutes of that date; this is a report by B. A. Wilcox:

'Going around with the auditor checking over

the books on new and old work. Stated that the shops that belong to the Association are waiting for Mr. Ennes to come back from his vacation.'

Same minutes, August 16, 1938:

'Brother Kelly stated the Mr. Ennes of the Cabinet Association came back from his vacation and were going to have a meeting sometime between now and Friday. The mills formed an association and Harry Gaetjen of the Empire Planing Mill is the new secretary.'

The same minutes, April 23, 1938 (August 23, 1938):

'B. A. Edwards reported that he was going into the shops that belonged to the Association. Visited Braas & Kuhn, Ostlund & Johnson and Mullen Manufacturing Company.' [268]

"The same minutes for September 6, 1938, report by B. A. Wilcox:

'Going around with accountant when necessary and routine business. Conference Committee: Brother Kelly reported that the mills and cabinet shops that belong to the Association are going to start paying in two checks, one with the old scale going to the employee and the 12½ per cent increase on one check which the employee endorses and returns to the employer for which a receipt will be received toward his assessment.'

The minutes of December 13, 1938:

"B. A. Wilcox reported, 'Going around with the auditor.'

Minutes of October 25, 1938, Report of Officers:

"B. A. Wilcox: Going around with the accountant cutting down claims. Material coming from the Tacoma Mill and Supply Company for the Fair. T&G going to Shoals.' "

M. A. PEEL,

called as a witness in behalf of the plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Burdell:

I am a salesman at present for the Pacific Manufacturing Company and have been for about a year or so. Prior to that I was salesman for Central Door and Plywood Corporation, Portland, Oregon, for about four or five years. I also sold for an affiliated company, Albany Sash and Door Company, Albany, Oregon. I sold sash and doors and inside door jambs, what is commonly called millwork, for those companies in California, including San Francisco Bay area. The employees of Central Company and Albany Sash and Door Company, when I was selling their products, were [269] members of an A. F. of L. Union. I don't know whether they were members of the United Brotherhood of Carpenters and Joiners Union.

(Testimony of M. A. Peel.)

I know James Stewart; he is Manager of Symon Brothers Oakland store. He was a customer; I sold him sash and doors. Mr. Stewart was a customer the last several years. In 1937 and 1938, as long as he was manager there—1936.

I know Walter C. O'Leary. I met him in 1938; I presume about the middle or the last of the year, at the Union quarters on Webster Street in Oakland. Prior to the time I met him I had a telephone conversation with him from Symon Brothers' Store, Oakland. James Stewart was with me; I was in there soliciting business. I didn't get any orders then. Mr. Stewart called Mr. O'Leary; I took the telephone and told Mr. O'Leary who I was, that I wanted to ship some goods in here, doors, and I said that we were an A. F. L. Mill and carried the Union Label; and I was astounded to think we would be restricted in not being able to sell our merchandise in any part of the United States. Mr. O'Leary said what Mr. Stewart told me was true, that I could not ship Mr. Stewart any goods that were forbidden by the Union. I told Mr. O'Leary I would go around and see him; I couldn't understand that. A short time afterward I went around to see Mr. O'Leary at the Union headquarters on Webster Street. I saw him there; nobody else was present. I asked Mr. O'Leary to explain the reason I couldn't ship merchandise in here and he just told me it was forbidden by the Union to bring certain classes of goods in and since there were manufacturers who had the union stamp in this territory

(Testimony of M. A. Peel.)

here—— So I asked him what our workmen up there were going to do to be able to buy merchandise and eat, and he said, "Well, they would have to get along the best they could."

"Q. Did he say the material had to bear the stamp of a mill in this territory?"

"A. That was his——"

"The Court: That was his what?"

"A. That was his answer." [270]

I just talked and I argued for shipping merchandise, and his talk was no. I did ask him over the telephone how the men up there were going to buy California Prunes, and he said, "Well, let them grow their own prunes."

When I met Mr. O'Leary we had a little laugh over that conversation.

At the meeting at the Union Hall Mr. O'Leary gave me a piece of paper and told me what we could do, which is Government's Exhibit 140 for identification. He said those were the rules we were to go by. I said we would obey them if we had to.

Thereupon Government's Exhibit 140 for identification was received in evidence and marked "U. S. Exhibit 140", reading as follows:

"Mr. Burdell: '16. In the interest of standardization of rates of wages and working conditions, it is agreed that no material will be purchased from, and no work will be done on any material or article that has had any operation performed on same by Saw Mills, Mills or Cabi-

(Testimony of M. A. Peel.)

net Shops, or their distributors that do not conform to the rates of wage and working conditions of this Agreement. The purchase of and the working of the following products is excepted:

Dowels

Panel Stock

Stock Panel

Veneers

Machine Carved, Pressed or

Embossed Mouldings

Pine, Redwood and Philippine

Mahogany Doors

1 panel

10 Light or French

5 Cross Panel

1 Light 1 Panel

1 Light 3 Panel

1 Light 6 Panel

Pine Garage Doors

2-Light Windows

Lumber, rough or surfaced

Sheathing surfaced

Flooring up to 1x6 & 1 $\frac{1}{4}$ x4

Siding and Clapboards

Stepping

T & G up to 1x6" [271]

I do not know who wrote the handwriting after the word "flooring" on the paper. It was on there when it was given to me. My handwriting is on the

(Testimony of M. A. Peel.)

back, "Mr. O'Leary, 21st & Webster". I wrote that the day I got it. I had been selling Mr. Stewart doors and windows and sash. Some of those items appear on this list and some of them do not. Some of them do and some of them do not. Some of the items that do not were banned by the list. I met Mr. O'Leary at the Hall once afterward, to see if any bars had been let down so that I could ship the goods. His answer was no. After those conversations Mr. Stewart quit buying from me.

Cross-Examination

By Mr. Routzohr:

He did not tell me the piece of paper was part of a contract. My memory would not carry that far, I don't remember; he just gave me a piece of paper. I never knew there was any contract with Mr. Stewart's firm. The paper meant to me that things that were not on this list I was not to take orders for and ship into this territory here. I didn't know from the conversation that this was a part of the contract that prevailed in this district with various planing mills, granting certain exemptions as to lumber and millwork; I never saw that contract. I had only heard of a contract between employers and millworkers, as hearsay from customers. I had not heard there were exempted lists of articles in the contract that could be shipped in from any port. I got most of my information from Mr. O'Leary after the customer talked to me. Mr. O'Leary did not tell me there was

(Testimony of M. A. Peel.)

an exempt list in the contract he had with Symon Brothers. That is what he gave me. I put these papers in a file in my drawer because they pertained to business matters. I know that he would not let us do any work up North on any lumber; it had to be done down here. I considered it was possible they would [272] shut us out entirely. Every article that is on the exempt list we could ship out. I have read over the exempt list and notice that as to anything on it there was no objection to it being sold and brought in here. We did not sell dowels, panel stock, stock panel, veneers, machine carved, pressed or embossed mouldings, Pine Redwood and Philippine mahogany doors on the exempt list. We did sell light windows. There was no bar against selling windows then, there was a bar put on later. They stopped those a few months after that list was out and put out another list which I did not get. I did not find out who did that; they just told me to lay-off and not sell any double-hung windows. They were not on the list. Customers told me that; I did not know that was by agreement. I was not interested in that; I wanted to sell merchandise. I sold some finished lumber in here, it was allowed in that list. There were certain things I was selling not marked on the exempt list—sash was one. It did not bear the Union Label. I also was selling front doors not mentioned in the list. Those doors bore the Union Label. I was selling inside door jambs not on the list; they bore the Union Label. That covers most all in that present list. Items came up from time to time, moulding.

(Testimony of M. A. Peel.)

"Q. Did you understand that the reason why the two articles that you have mentioned, front doors and inside door jambs, which bore the Union Label, that the reason they were barred out was because of working conditions in the Northwest were different than the working conditions in the Bay Area, or San Francisco?

"Mr. Burdell: Just a moment. I object to that as asked and answered, and not proper cross-examination, and calls for a conclusion of the witness, and irrelevant and immaterial.

"The Court: Sustained.

"Mr. Routzohn: May I ask one more question along that line, if your Honor please? [273]

"The Court: Yes.

"Mr. Routzohn: Q. Did the people in that plant pay the same wage scale, did they have as large a wage scale as they had in San Francisco?

"Mr. Zirpoli: Just a minute, your Honor. The same objection.

"The Court: What?

"Mr. Burdell: That is not proper cross-examination.

"The Court: Did you say the same objection?

"Mr. Zirpoli: Yes.

"The Court: Sustained.

"Mr. Routzohn: Q. Can you tell this jury in what manner there is any violation of this provision in here in not letting your doors and your jambs come into this District?

(Testimony of M. A. Peel.)

"Mr. Burdell: I object to that as calling for the conclusion of the witness.

"The Court: Sustained.

"Mr. Routhzohn: Of course, we have an exception to all of this.

"The Court: Yes."

Cross-Examination

By Mr. Faulkner:

I don't know whether during the period of my employment by Central Sash and Plywood Corporation, and the Albany Sash and Door Company, they had any agency in San Francisco that sold their products; they sold directly through their own salesmen.

Further Cross-Examination

By Mr. Routhzohn:

The sash that did not bear the Union Label and the front doors and inside jambs which did bear the Union Label, were [274] not made in the same plant. The plant at Albany, Oregon, was an A. F. of L. Plant, but had to ship through the United States, in competition with the Mississippi Mills and other points in the United State where labor conditions were down. We had to have a little lower scale in Albany to compete, and until we could get out labor scale up we could not have the Union Label, although we were working as a Union plant. The living conditions were very favorable to the working men and although rents and living conditions in that area in

(Testimony of M. A. Peel.)

the Willamette Valley were better, with that little lower labor scale, we were unable to ship throughout the United States sash and doors. We could not pay the high scale demanded there, so the Union unionized their people and we worked under union conditions and our Union men paid dues. We were national distributors.

Redirect Examination

By Mr. Burdell:

It was only the sash manufactured at Albany that did not bear the Union Label; the doors and the jambs manufactured in Portland did bear the Union Label. We sold molding which we could not bring in; the merchants said they would not buy them from us because they would be blackballed. If the molding were made in the Portland plant they would bear the Union Label; if made in the Albany plant they would not. Central Door and Plywood Association specializes in sash and doors. Our chief business was sashes. The chief business of Central Door and Plywood Association was sashes and doors.

Recross-Examination

By Mr. Routzohn:

"Mr. Routzohn: Q. And your ability to ship these sashes and doors to various places in the United States was due [275] to the fact that you had a lower wage scale, isn't that right?"

"Mr. Burdell: I object to that as calling for a conclusion of the witness.

"The Court: Objection sustained.

(Testimony of M. A. Peel.)

By Mr. Faulkner:

Neither Albany Company nor Central Sash and Door Company manufactured machine carved or pressed or embossed moldings, just run through a planing mill. We did not have a very large mill. The doors and sash referred to were mass production, shipped in carload lots. I never made a check of the conditions in Albany in regard to living conditions and the wages paid in Albany. I didn't ever make a check as to living conditions and wages paid in Portland.

JOHN CARRICK,

called ~~as a~~ witness in behalf of the plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Zirpoli:

I am in the building materials business; we handle lumber and millwork; we sell it retail. We have been in that business about 12 years. The name of the firm is El Cerrito Lumber Company, a co-partnership of the wife and myself. In 1936 the millwork came from the Northwest, Washington and Oregon. We purchased from C. D. Johnson, Long-Bell, Weyerhaeuser Company, and Robinson Manufacturing Company, located in Oregon and Washington. During that time we manufactured probably five per cent. of our own millwork. After 1937 we

(Testimony of John Carriek.)

stopped making purchases from the Northwest. In 1937 we purchased a car of finished lumber, 2,000 feet of $5/8 \times 4$ base. Mr. O'Leary had insisted that this item be manufactured in the East Bay Area. [276] Probably five or six months prior I had a conversation with Mr. O'Leary. He said we couldn't bring any patterned or molded lumber or molded front doors. The car that came in 1937, was in the Fall, from Weyerhaeuser Sales Company, State of Washington. The $5/8 \times 4$ base lumber was stored in the bottom of the car, in the center. I asked them to place it there. The car was delivered at Stege, California. After the car arrived I checked the lumber with this invoice, which appears as $5/8 \times 4$ base-board.

Sample of Lumber marked "Exhibit U. S. No. 141", for identification, is a piece of four-side lumber, meaning surfaced on four sides.

Sample of lumber marked "Exhibit U. S. No. 142", for identification, is a $5/8 \times 4$ round-edge base. The base is molded and not permissible to be brought in. It is the same type lumber that came in that carload.

Invoice marked "U. S. Exhibit No. 143", for identification, bears a cross within a circle on the second page, which indicates the base about which I am now speaking.

When the car was almost unloaded Mr. O'Leary came out; he discovered the base in the car. He came over to my place of business, approximately three-

(Testimony of John Carrick.)

quarters of a mile from Stege, and Mr. O'Leary and I had a conversation; no one else was present. This was in the Fall of 1937. He said he had been down to Stege and discovered this car and discovered this base in the bottom of the car; and that we weren't allowed to bring it in; that this item must be manufactured in the East Bay. He insisted that we don't bring any more of that into our yard. He said we would have to take that base out of the county, and insisted on it being done immediately. I sent a truck and driver to haul the base to Vallejo. He said if we wouldn't do that he would put a picket on the car; in fact, he had the picket on the car. He said they were going to continue to [277] picket the car until we got the base out of the car. We unloaded the base and sent it to Vallejo, and Mr. O'Leary sent the picket with the truck to see if we went out of the county. We sold part of it up there, and after it cooled off we brought it back, two or three weeks later. After this experience we didn't attempt to bring any more millwork from the Northwest; we didn't think it would be worth while.

Invoice was introduced as "U. S. Exhibit No. 143."

In the Spring of 1938 there was a pool car came in from Robinson Manufacturing Company, consigned to Lincoln Lumber Company in Berkeley, California. In the car was some lumber for us, purchased from Paramino Lumber Company as jobber or broker, but bought from Robinson Manufacturing Company, Everett, Washington. Mr. O'Leary

(Testimony of John Carriek.)

phoned and said he heard we had a car of jambs coming in; I denied it. We had the car diverted to Walnut Creek and unloaded in the yard of Spencer Lumber Company, and after three or four weeks we went up there and got it and brought it back to our yard. The car was hot, which means not permissible to be brought into the Bay Area. Mr. O'Leary said it was not permissible. After it was brought back Mr. O'Leary came out, but we had it buried with lumber and panels so he couldn't find it. We had to hide it in order to retain it.

Invoice marked "U. S. Exhibit No. 144" was introduced in evidence.

It covers the car of jambs I just referred to.

Mr. O'Leary gave us a list of materials he would let us bring in. I would say I received it about the latter part of 1938.

"U. S. Exhibit No. 145" was introduced in evidence.

* That was the paper he gave me. After the last shipment I spoke about we didn't bring any molded lumber from the Northwest; we had to buy it locally. We did very little manufactur- [278] ing of our own. We had very poor machinery. We had to purchase some machinery later on, in June 1939; consisting of a sticker and four-side planer. A sticker is a machine to manufacture patterned or molded lumber, such as Exhibit 142 for identification.

Samples of wood were marked "U. S. Exhibits Nos. 141 and 142", and were introduced in evidence.

(Testimony of John Carrick.)

We purchased a sticker and planer to manufacture molded or patterned lumber; the type we were previously bringing in from the Northwest. We purchased the machinery because we found it inconvenient; we just couldn't operate by picking this stuff up, it took too long, prices were too high, and delays in getting out orders from local suppliers to our customers. That condition was not existent when we purchased from the Northwest. You could order a car and have it down in two weeks.

Cross Examination

By Mr. Faulkner:

Exhibits 141 and 142 may be classified as soft wood.

No. 142 is a type of molded lumber or base wood; it is something that goes into every house, is an item you have to carry in stock. I didn't say we were requested to buy lumber from mills in the San Francisco Area, we had to do it in order to operate.

We bought from Redwood Manufacturers, Pacific Manufacturing, California Builders, Hogan Lumber, E. K. Wood.

Cross Examination

By Mr. Routzohn:

I wouldn't know whether Johnson Lumber Company, Long-Bell Lumber Company, the Weyerhaeuser Company and Robinson Manufacturing Company were organized mills in 1937, or whether that was non-union lumber we were pur-

(Testimony of John Carriek.)

chasing. I don't know whether [279] the lumber we were purchasing at that time was manufactured under labor conditions lower than the conditions prevailing in San Francisco.

Lumber material appearing on Exhibit No. 143 was purchased by us for our own purposes; it constituted an entire carload, and we received whatever is on the invoice. Cross mark on the second sheet opposite the 5/8 x 4 refers to fir base, that was the only lumber objected to in that car. I suppose they didn't have the facilities to manufacture the remaining part of the carload in this part of the country. The remaining portion of the car was on the exempt list, as indicated by Exhibit 145.

Item of 5/8 x 4 base was the only thing not on the exempt list. That was placed in the bottom of the car, in the center, purposely, so as to hide it, under instruction at the time ordered. We knew we were bringing in lumber contrary to the agreement, of which Exhibit 140 is a portion, but those people don't run my business.

The base consisted of 2,000 feet as compared with 20,000 feet of other lumber that was not objected to. The lumber was made in the Weyerhaeuser Mill, in the Fall of 1937.

We have been instructing the manufacturers to place the "hot lumber" in the cars so that it would be hid from the business agents who came around to see whether we had any hot cargo. We have been doing it occasionally from 1936, on. Some is awfully hard to buy in this territory and we had to get it in

(Testimony of John Carriek.)

to continue our business. I do not know whether Robinson Manufacturing Company of Everett, Washington, was organized by labor in 1938; I could not say whether it was C.I.O. lumber at that time.

I discovered from experience "hot cargo" or "hot lumber" is something I could not buy. It meant something you can't bring in. [280]

"Q. You couldn't bring it in because there was a dispute on, a war on labor between the C.I.O. and the Carpenters' Brotherhood, which was an A. F. of L. organization? Didn't you understand that?"

"Mr. Zirpoli: I object to that as irrelevant, and immaterial. There is no issue involved in such a war."

"The Court: Sustained."

"Mr. Routzohn: That is all."

Redirect Examination

By Mr. Zirpoli:

By saying lumber you couldn't bring in, meant bring from the Northwest, Oregon and Washington.

The purchase price of the base on Exhibit 143 was \$42.50 per 1,000 feet; market price for the purchase of the same size and quality base in the San Francisco Bay area at the time was from \$65.00 to \$75.00 a 1,000.

Inside door jambs on Exhibit 144, from the Northwest, was 78c per set. The market price for the same size and set of inside door jambs purchased locally in 1938, was \$1.10.

(Testimony of John Carriek.)

"Mr. Routzohn: We object on the ground that this is all immaterial, as to what the difference in price was.

"The Court: Overruled."

Lumber 25/32 x 3/8 was 79c per set, delivered from the Northwest. The same purchased locally was \$1.05 at the prevailing market for that particular set. Sets 2 x 8, 6 x 8, 25/32 x 1-3/8 was 74c per set, delivered from the Northwest. The same set of inside door jambs purchased locally was \$1.05, at the prevailing market.

Recross Examination

By Mr. Routzohn:

I couldn't tell you the difference between the wage [281] scale in San Francisco and that firm in Oregon or Washington. I don't know anything about the wage scale in Washington and Oregon. Those are delivered prices.

Recross Examination

By Mr. Faulkner:

The prices I indicated were from an invoice I have in my hand. This is from California Builders, local dealers, and here is a shipment about the same time which came from Robinson Manufacturing Company from the Northwest.

The price of \$1.10 and \$1.05 is the price quoted from a firm engaged in the business of sash, doors, millwork, panels and wallboard. The broker mentioned on purchases from the Northwest was Paramino Lumber Company, a brokerage house in the

(Testimony of John Carrick.)

Bay Area. We used to buy from different brokers. I don't know of anybody in Alameda County. Our business is conducted in Contra-Costa County.

The business conducted entailed the purchase of lumber outside of our own county. We purchased orders through brokers in San Francisco, representing out-of-State firms. We usually bought direct from the mill, Mr. Paramino is about the only one, he is the only one I know of, the only one I can think of at this time.

Further Redirect Examination.

By Mr. Zirpoli:

The prices mentioned for purchase of inside door jambs were the total cost delivered to our place of business. There would be no other cost except unloading. Price on floor base was for merchandise delivered, F.O.B., El Cerrito.

When we purchased locally we had to go down and get it usually. The material shipped from the Northwest is far superior to that bought in San Francisco. They have a regular [282] schedule of prices for material in the local market; they all have about the same price, all mills. We bought from various mills here. There may be a fluctuation of \$2.00 in a 1,000, but no more than that.

CHRIS WININGER,

called as a witness for the plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Zirpoli:

My business is wholesale lumber and has been for eight (8) years. Just prior to that I was purchasing agent for Red River Lumber Company, for twelve (12) years. The name of my business is Pyramid Lumber Sales Company.

I buy lumber of all kinds from the mills in the North, and manufacturers, and sell to the retail yards and mills for remanufacture. Millwork is any work put on the lumber after it leaves the rough stage in the manufacturing plant. It includes all kinds of lumber, casing, base, molding, T&G, ship-lap, ceiling, flooring, window and door sashes. I purchase from probably fifty, (50) different sawmills in Oregon and Washington, some in California, but mostly in Oregon and Washington. I have visited the mills in the Northwest, very little in the San Francisco Bay Area. I sell to the mills in the Bay Area and have had occasion to visit them in connection with sales.

A piece of Ponderosa pine, surfaced both sides, is millwork. If that same piece is milled it is millwork. I am classified as a wholesale lumber broker. I visited the mills in the Northwest many times. I have made a study of the lumber industry and the operation of mills, and the machinery used in connection with

(Testimony of Chris Winingar.)

the operation of mills. I have studied the speed with which machinery can operate in the mills and the [283] method of running lumber and the cost in manufacture, whether in mass production or small production.

There is no difference in the price paid in buying Ponderosa pine, surfaced four sides, from mills in Washington and Oregon. The mills in those states make no charge whatever for running Ponderosa pine or fir to standard patterns, shown in the standard catalog or standard grade and rule book. The mills in the Northwest make no charge for cutting tongue-and-groove. They make no charge for standard molding. They make a charge, but they make no excess charge, because the difference in freight and difference in weight absorbs the cost of running these special patterns. If you were buying up at the mill there would be a charge but from the difference in freight it would be practically the same. The costs delivered here in San Francisco are the same to the purchaser whether he purchases it surfaced both sides or standard mold or tongue-and-groove.

I had occasion to go outside the San Francisco Bay area in the summer of 1937. I had a shipment of Ponderosa pine coming from the Northwest and directed it should be shipped to the Peerless Building and Fixture Company at Sheehan-Ballards, Berkeley.

I was told by my customer that I had some lumber there on horses, marked "hot cargo", and I had bet-

(Testimony of Chris Wininger.)

ter take care of it. I went to the Sheehan-Ballards place and found that the lumber was on horses and had a sheet of paper, I should judge 3 x 4 feet on both ends, both sides, marked "hot cargo". That was lumber I had ordered from Ewanna Company, Klamath Falls, Oregon.

It was 1 x 10 No. 2 common Ponderosa pine, T&G with a mold on one edge. I called the customer, Klier Bros. in El Cerrito and asked what it was all about. I called up Union Headquarters—it had underneath this "hot cargo". [284] "Carpenters' Union Local No." so and so; Millman's Union, and the Teamsters Union.

I telephoned to the Carpenters' Union and asked them what I could do about it. After the telephone conversation I saw Walter O'Leary, about three days later in July, 1937, at the Union Headquarters, Oakland. I had a conversation with him, for possibly thirty (30) minutes or more. There were others present but I don't know who they were. I talked to the head man in the Carpenters' Union and Millworkers' Union men were present, but what their names were I don't know. I asked Mr. O'Leary what it was all about; what I had to do to get the lumber released. It was something I was not familiar with, never had anything happen like it and had no knowledge as to any restriction to bring in molded lumber in this district. He gave me a piece of paper which showed what was supposed to be permissible and said I would have to dispose of it; get it out of town,

(Testimony of Chris Wininger.)

or something else, that I could not sell it in the Bay Area; it did not have the Union Label on it.

"U. S. Exhibit No. 146" was the paper given to me in connection with that conversation and was introduced in evidence and read to the jury.

"Bay Counties District Council of Carpenters

San Francisco and Vicinity

Office

Building Trades Temple

Fourteenth and Guerrero Sts

Telephone Market 1806

San Francisco, Calif.

D. H. Ryan, Sec'y-Treas.

A. L. McDonald, President

"October 5, 1937

"Bay Counties District Council of Carpenters,

200 Guerrero Street,

San Francisco

Attention: D. H. Ryan, Secretary-Treasurer

"Gentlemen:

"The Employer-Employees B. C. W. P. Labor Conference [285] Committee were asked to define the meaning and intent of the terms 'Flooring', also 'T & G' in Paragraph of the Agreement of September 21, 1936.

"The unanimous decision was that you should advise all parties to the contract that 'Flooring' was defined as 1 x 3; 1 x 4; 1 x 6 and 1-1/4 x 4.

"and that

(Testimony of Chris Wininger.)

"T & G was defined as of the following materials and dimensions:

'Fir, T & G V, also

T & G V and C V

Redwood, T & G V I S also

T & G Bead 1 S

3/8 x 4 & 6

5/8 x 4 & 6

3/4 x 4 & 6

"Yours very truly;

EMPLOYER-EMPLOYEES

**B.C.W.P. LABOR CONFER-
ENCE COMMITTEE**

(Signed) By J. G. ENNES

J. G. ENNES,

Acting Secretary."

The lumber I received was not included in that definition. The T & G I received would not be T & G V as defined by that statement. Mr. O'Leary told me, in connection with that T & G, I would have to get it out of the Bay District, I could not dispose of it in the Bay District. The carpenters and teamsters would not handle it and I could not get it handled because it did not have the Union Label on it.

I again saw Mr. O'Leary a few days later and told him I had made arrangements to have the lumber shipped to McKinley Lumber Company at Stockton. He said that would be all right, but wanted to know if it was going to Stockton, so I wrote a letter to a truck driver at Pittsburg, instructing him to call

(Testimony of Chris Wininger.)

and pick it up and take it to McKinley Company at Stockton, and gave Mr. O'Leary a copy of the letter. [286]

The lumber was not shipped to Stockton. I called the truck driver on the phone and told him the lumber was for Klier Bros. and to stop on his way to Stockton and if they would accept the lumber to give it to them, and if not, to take it on to Stockton. It was delivered to Klier Bros.

I caused a shipment of lumber run to pattern to be made for Paramount Lumber Company, about six or eight weeks later, that came from Ewanna Box Company at Klamath Falls. I received a letter from Union Headquarters asking me to call at a certain time as to why I should be put on the "We do not patronize list."

U. S. Exhibit No. 147 was the letter received, and a carbon copy of my answer is attached.

Thereupon "Exhibit No. 147" was introduced in evidence.

Following receipt of the letter I attended a meeting in the Building Trades Council. My conversation was with Mr. O'Leary and Mr. Patterson. I was called before the Council and asked why I brought the molded lumber into the Bay Area when I knew it was a violation of the rules, and possibly an agreement I had made with Mr. O'Leary not to bring in moldings to the Bay District, to be used in the District.

My explanation was that Paramount Building Fixture Company was remanufacturing this molding

(Testimony of Chris Wininger.)

and nailing the trim on the cabinet and reshipping to customers all over the State and that it not all was being used in the Bay District, and I felt within my rights to bring it in. I was instructed not to bring in ~~any~~ more lumber that had detail millwork on it of any kind. It didn't have the Union Label on it.

Plaintiff's Exhibit No. 147 was thereupon read, as follows:

"First there is a letter on the letterhead of the Building and Construction Trades Council of Alameda County:

"J. C. Reynolds, Business Representative; J. H. Quinn, [287] President; Chas. R. Burney, Secretary and Treasurer.

"Building and Construction Trades Council of Alameda County. Affiliated with the State Building Trades Council of California and the Building and Construction Trades Department, American Federation of Labor. Meets every Tuesday evening at the Labor Temple, 2111 Webster Street, Oakland, California. Phones GLencourt 2474, TWinoaks 3113.

"Feb. 23, 1939

"Mr. Wininger,
Pyramid Sales Co.,
Pacific Bldg.,
Oakland, California.

Dear Sir:

"A request has been made by Millmen's Union, Local No. 550 to place your firm on the

(Testimony of Chris Wininger.)

official "We Don't Patronize" of the Alameda County Building and Construction Trades Council.

"This matter has been referred to the Board of Business Agents for further investigation. The Board will meet on Tuesday, February 28th, 1939, at 9:30 A. M. in the Labor Temple, 2111 Webster Street, Oakland.

"You are respectfully requested to be in attendance for the purpose of bringing about an agreement, if possible, that will be satisfactory to all parties concerned before final action is taken.

"Trusting that we may see you on Tuesday, we remain

Respectfully yours,

**BUILDING AND CONSTRUCTION
TRADES COUNCIL
OF ALAMEDA COUNTY**

By: Chas. R. Gurney

Secretary-Treasurer.

"owpa-20744

"AFL (20)"

"In response to that is a carbon copy of a letter dated February 25, 1939.

(Testimony of Chris Wininger.)

“February 25, 1939 [288]

“Mr. Chas. R. Gurney, Secretary-Treasurer
Building and Construction Trades Council
of Alameda County
2111 Webster Street
Oakland, California

“Dear Mr. Gurney:

“This will acknowledge receipt of your letter of the 23rd for which I thank you.

“I will gladly attend the meeting on the 28th at 9:30 A. M. to explain my actions, all of which have been in good faith and if not in accordance with the rules as laid down by your Association, I will gladly make any changes or revisions necessary.

“It is my intention at all times to cooperate with your organization in every way.

Very truly yours,

CHRIS M. WININGER, Manager
PYRAMID LUMBER SALES
CO.

MCW :mes

At the conversation I had with Mr. O'Leary with relation to the shipment of lumber marked "hot cargo", I showed lumber to Mr. O'Leary at the time.

Sample of lumber marked "U. S. Exhibit No. 148" is a piece of lumber showed to him.

Mr. Walter O'Leary placed the penciled letters "O.K." on the planed surface thereof. He told me

(Testimony of Chris Wininger.)

that particular item was o. k. for me to bring in without the Union Label. Name and description on back was put there by Ewanna Box Company.

Thereupon plaintiff's "Exhibit No. 148" was introduced in evidence.

Mr. O'Leary placed the penciled notation "Out" on the surface of Exhibit No. 149. At that time he said it was not permissible, I couldn't bring it in, it wouldn't be run locally and bear the stamp of the local union. He made one or two [289] suggestions how I might be able to get it run. He mentioned Lamman Brothers and I took it there, but they said they could not and would not run it, they couldn't run anything as thin as 3/8s of an inch. Mr. O'Leary said it would have to be run locally and bear the stamp of the Union Label, local union. It was to keep the local men working, give work to the local millmen. If it was run in some San Francisco mill and bore the Union Label of a San Francisco mill it would be up to me to prove that the wages paid to the San Francisco mill were in comparison with the wages paid in the Bay Area. Mr. O'Leary told me that more than once.

Thereupon "U. S. Exhibit No. 149" was introduced in evidence.

I made a sale of lumber to the Blackman-Anderson people in 1940, of Ponderosa pine from Ewanna Box Company at Klamath Falls. Part of it that was molded was with ship-lap with a V joint and one shipment came in by mistake, that was T & G

(Testimony of Chris Wininger.)

instead of V joint, and Mr. O'Leary was there when we unloaded it and he refused to let them unload it, but eventually did let them unload it and they called me up and told me I had to get the lumber out of the Bay District, that they would not allow me to sell it in the Bay Area. I took it back and my truck man went and got it to take it out of Nuner Brothers, El Cerrito. That same day Mr. O'Leary called me up and asked me what I was going to do with it. I told him I had sold the lumber to San Francisco Wrecking Company at Seabright, California, just out of Monterey.

While it was on the horses waiting for the San Francisco Wrecking Company to come and get it, one of the local yards wanted to buy it and I sold it to him and notified my customer at Seabright that I had sold the lumber and would give him another shipment, which I did. [290]

In an effort to make sales, if the customer told me he had a sale at Stockton or Salinas, etc., I would bring the shipment in of the molded lumber marked for that particular city. The truck driver would pick them up marked for out-of-town delivery and deliver to the customer with the markings on the lumber. What the customer did with it I didn't know; it was none of my business. I never saw the lumber, anyway.

I sold possibly fifty cars on that basis, by placing a destination other than San Francisco. The lumber was intended for a destination outside of the

(Testimony of Chris Wininger.)

Bay Area, so far as I know. I don't know if any was used in the Bay Area; not to my knowledge.

I made arrangements with the customers to have lumber shipped and marked for destination in the manner described. I told them they had to take it that way or I couldn't bring it in. That was the plan arranged for the bringing of the lumber in for the customer.

Sample of lumber marked "U. S. Exhibit No. 150" is part of the lumber marked "hot cargo".

It was thereupon introduced in evidence as "Exhibit No. 150".

It is Ponderosa pine, T & G, bead, cone, bead. This lumber is prohibited from coming into this area.

Cross Examination

By Mr. Faulkner:

I have been engaged in business as Pyramid Sales Company for eight (8) years, and also so engaged in 1936, and continuously since that time. I was bringing in Ponderosa pine that came from Ewanna Box Company at Klamath Falls. I brought in various kinds of lumber, fir, spruce and hemlock, from sources other than Ewanna. I was engaged in the same general business in 1936, 1937 and 1938. [291]

I sold Mullen Manufacturing Company several cars of merchandise. Most of the lumber I sold to Mullen was for refinishing, job lumber for refinishing into cabinets. From time to time I solicited the trade of the Mullen Manufacturing Company and

(Testimony of Chris Wininger.)

got some of Mullen's business. Not to my memory did I have any difficulty in bringing in a single stick of lumber for Mullen Manufacturing Company.

Cross Examination

By Mr. Todd:

Following the conversation in February, 1938, with Mr. O'Leary and Mr. Patterson, I was not placed on the "We Do Not Patronize list" of the Alameda Building Trades Council, to my knowledge.

When I went to that meeting I was placed on the witness stand, as I am now, by the Chairman of the meeting, and he wanted to know if I bought this molded lumber off of the Paramount Fixture Company. It was similar to a Court. The Chairman was seated to my right, possibly three feet away. He asked me if I had brought in certain lumber contrary to agreement. I told him I did because I knew Paramount was manufacturing fixtures and shipping them all over the State, because I had sold their fixtures myself in Stockton and other places. I said it was not violating my agreement or any rule when the lumber was being manufactured and shipped out of the Bay Area.

That was all the questions asked me and they sent me into the hall where Mr. Patterson and Mr. O'Leary followed me. They were going to have a conversation, by the jury or whoever was there, I don't know, and they said they would let me know. I call it a jury, I don't know, there were fifteen or

(Testimony of Chris Wininger.)

twenty men there. There was a bunch of men sitting in the room and they were discussing it between them and were going to let me know, [292] so I went out in the Hall and we engaged in friendly conversation for ten or fifteen minutes, and Mr. O'Leary said: "Chris, you had better quit bringing in anything for the time being, until all this blows away; we don't know whether it is going to be used locally, and the best thing to do is not to bring anything in except what is going to be used locally."

In the first room Mr. O'Leary just told the court that I was bringing in lumber. I am not referring to the meeting as a court to prejudice the jury. He said to the Chairman of the meeting I was bringing in molded lumber in violation of the rules, in violation of the agreement. The Chairman asked me if it was true and I told him it was. I was not asked if I intended to comply with the agreement; Mr. O'Leary instructed me not to bring in any more. He said the best thing for you to do is not to bring in anything, any molded lumber for shipment within the State.

I met Mr. O'Leary in my territory every week or so. I had not had a number of disputes with different Labor Unions prior to that time. I had one subsequent dispute with the same Union. About two or three months ago I was called down to the Union headquarters because I was taking some lumber out of a car and I had a teamster taking it out of the car instead of a lumber handler. Mr. Pat-

(Testimony of Chris Wininger.)

person, who was at Kliers Brothers' yard, asked me if I could not use some pressure to get Beckman to put a lumber handler in the car instead of a teamster, and I said I would see what I could do, and went up to where they were loading my carload at that time, and the teamster said, "If you put a lumber handler on the car I will walk off the truck", and I said, "That is not my job, that lumber is all sold before it gets into town here; if there is anything I can do to help I will do it."

That is not a dispute, I had nothing to do with it. That is the only trouble I had. [293]

I answered the letter asking me to attend the meeting; carbon copy of the letter is my answer. I recall stating if my actions had not been in accordance with the rules as laid down by your Association I will gladly make any changes or revisions necessary and said it is my intention at all times to cooperate with your organization in every way, which I meant.

I remember Mr. O'Leary telling me something to the effect that I could bring in all the lumber I wanted, but we will not work on it if it is non-union lumber. He said he would put on that "We do not patronize", if I did bring in lumber; that I could not bring it in, that I would be put on the unfair list and no one would buy from me, the mills would not be allowed to buy from me. He did not say that I could bring in all the lumber I pleased and that union workmen would not work on it. Mr.

(Testimony of Chris Wininger.)

O'Leary did not ask me if I intended to comply with my agreement, but he requested me to comply with it.

The letter indicated what organization it was at the meeting. Millworkers' Union Local Number so-and-so, it is in the letter. I guess it is Local 550.

I know Mr. O'Leary represents the millworkers' union and Mr. Patterson the lumber handlers' union. They said they wanted to keep the local men busy.

We discussed "patronize home industry", and I said all things being equal, I preferred to patronize home industry myself, if we could get it done locally.

As far as I recall just Mr. O'Leary and Mr. Patterson and myself were present at the second conversation in the hall. We waited there half an hour waiting for the verdict to come out of the room. I call it a verdict because they were going to let me know whether I was going to be put on the "We do not patronize list". Finally someone came to the door and called Mr. O'Leary back in the room, he came back and said, "We will drop [294] you a letter and let you know what about it", and I never heard from them afterward. Nobody used the word "verdict", but I have to have some name for it. Nobody used the word "court".

Recross-Examination

By Mr. Faulkner:

The cabinets mentioned were kitchen cabinets.

(Testimony of Chris Wininger.)

Redirect Examination

By Mr. Zirpoli:

As far as I remember lumber sold to Mullen Manufacturing Company was all shipped in lumber, surfaced two sides. It was permissible to bring that lumber into this area. The agreement and union rules referred to at the meeting were the rules that we could not bring in anything in the Bay Area that contained millwork or molded lumber or moldings, etc., surfaced four sides or surfaced two sides.

The word "court" was not used at the meeting nor was it used elsewhere by Union men.

There was a verbal agreement with Mr. O'Leary that I would not bring in any molding or molded lumber from the North into the Bay Area unless it had the Union Label and the wages paid at that particular point were in comparison with the wages paid in the Bay Area, but I could not get it from the North with the Union Label on it.

Recross Examination

By Mr. Faulkner:

According to my memory all I sold to Mr. Mullen was shop lumber to remanufacture. It is only surfaced two sides. The question of permissibility in my sales to Mr. Mullen did not arise to my knowledge. As far as I can remember I sold lumber from the State of [295] Washington to Mr. Mullen, and I sold what he ordered.

(Testimony of Chris Wininger.)

Recross Examination

By Mr. Zirpoli:

As far as I can remember the things he ordered were things which were permissible pursuant to my agreement. The question of permissibility, when dealing with Mr. Mullen, never arose.

HARVEY BROWN,

called as a witness on behalf of the plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Howland:

I was a dealer for Aladdin Lumber Company of North Portland, Oregon, in 1940. I represented them as salesman. They sold ready-cut homes. It was a frame house that had all its studding cut, and all the lumber cut and fitted, ready to nail together. It was cut and made ready to fit at the plant, in North Portland, Oregon. It was shipped down here in sealed freight cars, finished and cut.

They would sell all of the wooden part of a house, above the mud sills, and the roof, nails, tanks, building paper, doors and windows; everything but the electrical and plumbing equipment, foundation, plaster and heating. The price ranged from a few hundred dollars up to many thousands, depending upon the size and quality of the house selected.

(Testimony of Harvey Brown.)

My business consisted of soliciting business, following up inquiries and attending to F. H. A. details, tending to arrangements with contractors. The Company had a form order blank and I signed that as authorized dealer.

I met Mr. Charles Rowe one time, about March 1, 1940. [296] He called my office by telephone and stated he would like to see me and see if we could not get together. I told him I would be glad to talk to him at any time and subsequently met Mr. Rowe at my office, where he came with a gentleman introduced as McGinnis, who he said was a representative or secretary of one of the carpenters' unions. I think Mr. Rowe said he was representing one of the unions.

Mr. Rowe, Mr. McGinnis and I had a conversation with my wife present.

"Q. Will you tell us in your own words to the best of your recollection the substance of the conversation that you had with Mr. Charles Rowe at that time?

"Mr. Faulkner: We object to that as immaterial, irrelevant and incompetent, hearsay as to the employer defendants, and not within the issues of this case, no foundation laid in this, that there is no evidence in this case that a single employer here on trial is engaged in the business or enterprise or undertaking similar to that engaged in by the witness, nor is there any showing in this record that any defendant employer in this case is engaged in mill-

(Testimony of Harvey Brown.)

work business as described by any witness in this case.

"Mr. Routzohn: We also wish to add to that objection that it appears that it is non-union material that is being shipped in here and therefore does not apply to our union.

"The Court: Overruled.

"Mr. Faulkner: May that objection go to any conversation between this witness and Mr. Rowe?

"The Court: Yes."

Mr. Rowe asked me if we could get together on this building program and I told him that was taken care of in Portland, Oregon, I had nothing to do with policies of the company. He asked me what the saving was by the ready-cut [297] system and I told him approximately twenty per cent. He then said, "You can readily see how that would affect our arrangements by reducing the amount of labor." By arrangement he meant our labor setup. He said something to that effect.

He said they had stopped the Montgomery Ward and the Pacific System Company from building ready-cut houses locally, and I asked Mr. Rowe if he was implying that I could not bring in ready-cut houses, and Mr. Rowe said, "That may hit you right between the eyes, but that is virtually what I am telling you." That was along in the conversation.

He made inquiry as to the manner of doing business with Aladdin Company in a general way. He said if he brought these houses in that Union labor

(Testimony of Harvey Brown.)

would not put them up. He asked me if this lumber had a Union Label on it. I told him it did. He said they stopped Montgomery Ward and Pacific System Company. I understand Pacific System Company conducts practically the same line of business from Los Angeles that the Aladdin Company did, about March 1, 1940.

After this meeting, about the first of March, I did not see Mr. Rowe again. Shortly after that I received a summons to come down to the Building Trades Council for a meeting, I believe, March 12, 1940. I believe it was Alameda Building and Construction Trades Council in Oakland. I went at the appointed hour. I believe it was at A. F. of L. or Labor Temple. I only saw one man whom I had seen before, Mr. McGinnis. There were about twenty or twenty-five other men there. I understood they were business agents of various union organizations.

They asked me what my business was in connection with the Aladdin Company and the Union Label and some questions about the union of the mill in Portland, of which I didn't know anything, and asked them to get that information from the Portland office. I tried to answer their questions. [298]

The purpose was whether the Aladdin Company should be placed on the blacklist in Oakland or the "We Do Not Patronize" list. The reasons stated at the meeting why Aladdin Company should be put upon such a list was because they were non-

(Testimony of Harvey Brown.)

union in the mill and we did not pay the same wage scale that they did in Oakland, and it would make a labor difference in the construction of a house.

They said they would let me know the decision. I received no communication or word from the persons present at the meeting. I had no further contact with Mr. Rowe or the other persons.

E. W. YATES,

called as a witness on behalf of the plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Zirpoli:

I am manager of F. S. Buckley Door Company, and have been for about three and one-half years. I am one of the copartners. Before I became manager I was a right-hand man of Mr. Buckley. I acquired an interest in the business after his death. Before that I was employed by him from May, 1924.

The business of Buckley Door Company is general millwork. We specialize more, though, on sash and doors.

In April, 1937, we entered into an agreement with the Union. I was unable to locate the contract. I have a 1938 contract. That is the last one we entered into. There is a memorandum that goes with that, I think covers an arbitrary wage set at that

(Testimony of E. W. Yates.)

time, a retroactive wage scale, pertinent to the same contract.

Card is that of Al Edwards, business agent at the time, which was received from him in the regular course of business. [299]

Thereupon card of Al Edwards was marked
"U. S. Exhibit No. 151".

"U. S. Exhibit No. 152", for identification, is the last agreement that we had with them. Prior to that agreement we had a conference with Mr. Ricketts, a member of the Union. He called up and said we had a job out on Carl and Stanyan Streets, from contractors known as Steen & Kreig. He said we were going to supply the millwork for that job and we were not on the fair list, we didn't have stamped goods with the Union stamp. He said if we went ahead with the job under those conditions we were going to have trouble.

Later we entered into this contractual arrangement with the Union. Before we consummated the agreement we had a number of conversations with Al Edwards and Dave Ryan, in the early part of 1937, probably the first of March. As a result of these conversations we entered into the agreement.

We had lumber coming from the North at the time. Principally interior trim, doors, jambs, material like that. We had been bringing that material in ever since the first part of 1936. We had this material in our place; in the neighborhood of four or five carloads.

(Testimony of E. W. Yates.)

I had a conversation with Mr. Edwards about this stock, Mr. Ryan was present. They demanded we have stamped goods, and if we were going to sign up with them, enter into an agreement to operate a closed shop and stamp the goods we sent out of our place. We wanted to know where we were going to come off on the present stock that didn't have the stamp on it. That was quite a vital point, so we agreed to sign up with them, provided they would give us the right to dispose of the goods we had on hand. Also in that same agreement that they would exempt the three cars we had bought in the North at that time. They agreed to stamp the goods we had in the [300] house so we could dispose of it on union jobs and also agreed to let the other three cars come in that we had bought.

The Union sent a man to stamp the goods in the shop, and we hired the man that was sent, and they sent another man out to complete the work.

"U. S. Exhibit No. 153" is pieces of lumber that was stamped.

We brought in all the items that were complained about, such as interior trim, surfaced-four-sides material, that was not what they were complaining about. The items they were complaining about were molded items. We had molded items in our shop purchased in the Northwest. We were getting most of our stuff from Olympia, Washington, at that time.

Thereupon "U. S. Exhibit No. 153" was introduced in evidence.

(Testimony of E. W. Yates.)

One of the three cars arrived. I called up Al Edwards at the Hall. I said, "Al, we have got that car of trim here, we want you to stamp it." I don't recall his exact words, but he left the thought with me that he did not know anything about such an agreement. We had not had the car unloaded. We wouldn't touch it until we had them stamped, that was our agreement. We made it in good faith with them and supposed they would carry it out with us. We were somewhat exercised over the fact that he would not stamp it for us, so we went down to the Hall at 14th and Guerrero Streets, Mr. Buckley and I.

We talked to Dave Ryan and Al Edwards. We asked them why they would not do it. They said they didn't have any such agreement with us, that they were going to stamp the three cars that we had ordered. We had quite a long discussion, probably about thirty, forty-five minutes, and finally we made a deal that if they would stamp that one car we would cancel the other [301] two cars, and they finally agreed to do that.

The lumber in the car was what you might call "hot items", items they didn't want in here.

"U. S. Exhibit No. 154" is a manifest, also a remittance blank listing lumber that came in that car. We were finally permitted to unload.

Thereupon "U. S. Exhibit No. 154" was introduced in evidence.

(Testimony of E. W. Yates.)

Cross Examination

By Mr. Faulkner:

My firm is Buckley Door Company; our business is general millwork, which I describe as doors, frames, interior trimming; for sale to contractors and home builders.

We first started in business here in 1924. We were operating out of Portland during 1935, when things got tough here, in early '30s, '33 and '34, and at the end of 1934 we went to Portland and operated out of Portland during 1935. We came back here the first part of 1936, and my firm is here now. When we came back here our materials were coming from Washington and Oregon, and we were engaged in the sale of those materials to whatever customers we could get in this district.

At that time we did not have a Union Label. The Union Label on our goods came alone later, after an agreement. April, 1937, was when we signed the agreement with the Union. There is a paper that isn't here that we signed in 1937.

We might have sold plywood to Mullen Manufacturing Company prior to 1937. We never had any discussion with anybody prior to that about the Union Label. We were not interested in the Union Label and would not have any reason for discussing it. I could not say definitely whether we sold our product to Mullen Manufacturing Com-

(Testimony of E. W. Yates.)

pany during 1936 or the [302] early part of 1937. We might have records which would disclose it. I will examine the records to see if we made a sale, and if we did, will bring the record of it.

Cross Examination

By Mr. Rontzohn:

After our first contract with the Carpenters' Union we received the Union Label which we have continued to use up to the present moment. Based on the contracts with the Union we used a Union Label on material that we should use it on. The management of the business has no access to the stamps. The men in the shops have control of the stamps. The Union Label is used in our shop on the work we turn out.

Exhibits 153-A and -B were taken from the wood that was in our yard at the time we first signed the agreement. That was non-union material. The carload we had the rumpus about was non-union material also. That was one of the cars they had agreed to let us bring in. They stamped the car after we had entered into our agreement with them. They also stamped all lumber on hand at the time of our agreement.

The card reads: "District Council of Carpenters", "Exempt Material, by the Bay Counties District Council of Carpenters". That isn't the Union Label. I think that is a special stamp, probably made for cases just like ours. It was stamped on

(Testimony of E. W. Yates.)

our goods to be disposed in this locality. That covered that special arrangement.

Cross Examination

By Mr. Tobriner:

The only agreement we ever signed was with the Union that you see the agreement with on the table. That did not include the Building Trades Council. I think someone told me [303] he represented the Building Trades Council. I think Mr. Ricketts is the man who told me. It is a little hazy, but that is what I think.

Recross-Examination

By Mr. Routzohn:

Contract, Exhibit 152, shows it was made, so far as the Unions are concerned, with W. P. Kelly, W. L. Wilcox and A. L. Edwards, representing Local Millmen's Union 550 and Bay Counties District Council, by Mr. Ricketts. I don't know if the prior one was by the same individuals. It was the same organization.

The Court: Did Mr. Ricketts sign this?

Mr. Routzohn: No, Mr. Ricketts' name is not on there.

Redirect Examination

By Mr. Zirpoli:

In the consultations had with Mr. Edwards at the time we entered into the contract, Mr. Spencer participated in one. He is the manager of the Eureka Sash and Door. He is connected with the Lumber

(Testimony of E. W. Yates.)

Products Association, as far as I know. The conversation was held in his office in April, 1937, just prior to the signing of the contract. There was present Mr. Spencer, Mr. Buckley, Mr. Ryan, Mr. Edwards and myself. One of the matters discussed was the releasing of the stock we had in the warehouse. Mr. Spencer participated in it.

Thereupon Minutes of Millmen's Union No. 42, Exhibit No. 7, for identification, was introduced in evidence as "U. S. Exhibit No. 7", with the understanding that the minute books should be offered in evidence with the privilege of anybody connected with the case reading from the minutes.

"The minutes are dated San Francisco, California, [304] April 27, 1937.

"'B. A. Edwards in his regular weekly report stated that he had placed a man in Buckley's Mill to affix an 'Exempt Stamp' to all of their materials now on hand and that no more materials would be brought in under unfair conditions by Buckley.'

"That is the end of the sentence, if your Honor please, that I read."

CLARENCE BLACKMAN,

called as a witness on behalf of the plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Zirpoli:

My business is lumber. I have been in that business about twenty-five years. I am a partner in the business of Blackman-Anderson Lumber Company. We buy and sell stock goods. We bought white-pine lumber during the year 1938, from Klamath Falls. I made a purchase of that kind of lumber in May, 1938, and recall the arrival of a shipment in May of 1938, at our yard.

I had a conversation with Mr. O'Leary about the shipment. It was white-pine lumber from Klamath Falls. It arrived at our spur track in front of the mill. I was there at the time of the unloading. That particular car was a pool car and we were stopped by Mr. O'Leary from unloading it. He had his man with him and the Lumber Handlers' Union agent was called to take our men off the unloading at the time. We were unloading the car and the men were stopped by Mr. O'Leary and by Mr. Patterson, of the Lumber Handlers Union, and we were told we could not unload the car, and that which we had unloaded was marked "hot" and the car was marked "hot". I finally got Mr. O'Leary to get Mr. Patterson to release the car so we could get the lumber out to stop demurrage. We [305] were permitted to take the lumber off and the men were told not to

(Testimony of Clarence Blackman.)

handle it after it was unloaded. After it was unloaded it was marked "hot", in chalk. We were told we had to stop bringing in that type of material, that we would not be permitted to bring it in from Klamath Falls, Oregon. He told me we could bring it in in blank and have it run locally. He stated that the material that was brought in could not be sold in a certain number of counties around or adjacent to our territory; if it was going out of the district we could bring it in.

We had to stop purchases from the northern mills after that incident. We were not able to bring any more in. We brought some material in blank and had it run, then it would be stamped by the mill that we had run it and we were permitted to sell it. This increased our cost of that lumber. It increased the price of the material, it also made an inferior article out of it because the additional run degraded the material.

"Mr. Routzohn: I would like to ask that that all be stricken out for the reason that it is immaterial, irrelevant, and incompetent.

"The Court: Denied."

We received lumber, it was part of three cars, in the latter part of 1939. After it was all piled in we were told that we would have to move it out. That was after Mr. Anderson and I started business, before it was my Dad's. This happened in the Fall of 1939, November or December.

I had a conversation with Mr. O'Leary about this

(Testimony of Clarence Blackman.)

lumber. We put that in without taking it up with him, feeling we had a right to put in the stock we wanted, and after we had piled this material he came in and examined it and told us we would have to take it out of there or have it rerun, get a union stamp, and we would be permitted to move it back. We [306] loaded up one large load and sent it to a union mill to have it rerun. We were going to have it sanded, and they turned it down and our driver returned it. So as not to involve the driver I drove it over to a shed some blocks away and stored the material there, which we also did with the rest of the material we had piled in the yard. We had to haul that lumber early in the morning or late at night, whenever we felt we were not under watch and could get it to the job so as to dispose of it. After we disposed of that material we discontinued it and worked along their lines.

While we were making purchases from the Northwest, the price for the two-surfaced lumber and for the same lumber, run to standard mold or pattern, was the same. If we brought the lumber down surfaced four-sides we would have to have it milled here if they wanted to have it patterned. The cost of patterning it was anywhere from \$6.00 to \$10.00 additional a thousand.

We purchased lumber through the broker, Mr. Wininger, in the early part of 1940; a stock of material that conformed to Union rules which we were permitted to bring in. The mill made a mistake and

(Testimony of Clarence Blackman.)
sent our old pattern, and that material was spotted by Mr. O'Leary. He was there when it was unloaded and I immediately called Mr. Wininger and told him that the material was wrong, that he would have to dispose of it. Had it not been for Mr. O'Leary's conversation we would have kept it because it was shipped-in material that we wanted to carry.

By lumber I mean millwork. Mr. Wininger took that lumber back, he had it hauled away by his trucks. [307]

Cross-Examination

By Mr. Routzohn:

I stated three different incidents of lumber objected to by the unions that I had purchased from the Northwest. By a "pooled" car is meant several other lumbermen had lumber in the car. That car was gotten together by Mr. Wininger, and in it were several orders. Each would take his portion of the car.

"Q. You used the words "Hot Lumber" or "Hot Cargo". What was meant by that?

"A. That means lumber that the unions objected to us bringing in.

"Q. Was that because it was unstamped or non-union lumber?

"A. It was union lumber. It was because it was not stamped.

"Q. Because it was not stamped?

"A. It was not run in the Bay District.

(Testimony of Clarence Blackman.)

"Q. Is that what your understanding is of it, or was it because it did not bear the union label?

"A. That material has to be run in the Bay District.

"Q. Did it bear the union label?

"A. It had no union label.

"Q. Wasn't that the objection, that it didn't have the union label?

"A. It would have been objected to because they wouldn't have recognized the union that it was run by because it probably would have been a CIO union or a company union." I don't know if that was C.I.O. lumber that came in at that time. I believe it is a company union, the Ewanna Lumber and Box Company located at Klamath Falls, Oregon. I wouldn't want to be quoted on whether it was a company union—if may have been A. F. of L., I don't know. It didn't have an A. F. of L. stamp on it. The shipment in 1939 came from Ewanna Lumber and Box. It didn't bear the union label. The mistake made by Mr. Wininger in fulfilling our orders in 1940, was that we had asked him to purchase lumber acceptable to the local union, and he didn't; that lumber was purchased from Ewanna Lumber and Box Company and didn't bear the union label. [308]

Redirect Examination

By Mr. Zirpoli:

I don't know whether this lumber is manufactured by a particular union. I understood in my

(Testimony of Clarence Blackman.)

conversation with Mr. O'Leary by "hot" millwork items that were discriminated against by the union, for the reason it was work that should be done here. It was taking work away from the men who were here.

Recross Examination

By Mr. Routzohn: [309]

All of this lumber that was objected to did not have the stamp of the carpenters' brotherhood.

E. W. YATES

recalled by the United States.

Cross-Examination

By Mr. Faulkner:

During 1936 to 1940 we sold material to Mullen Manufacturing Company. We had no trouble on any union question, in making deliveries to Mr. Mullen. Defendants' Exhibit B for identification, is a ledger sheet from our ledger. The type of merchandise covered by this ledger sheet is doors in 1937 and, I think, doors in 1938 and 1939. In 1937, they were slab doors and five cross-panel doors. I think there was some hardwood. I am positive they were all doors in 1937, because I checked my records. I didn't check the records for 1938 or 1939.

(Testimony of E. W. Yates.)

Redirect Examination

By Mr. Zirpoli:

In my conversation with Messrs. Spencer, Buckley, Edwards and Ryan, the releasing of merchandise from the warehouse at that time was a general topic of discussion. Mr. Spencer said the mills had finally agreed to permit the union to stamp the stock of goods we had in the warehouse.

Recross Examination

By Mr. Faulkner:

The contract identified in my direct examination was given to me by some member of the union, I assume around September 30, 1938. I think I signed a counterpart. We had another written agreement with the union in 1937, at the time we first signed up with them.

Thereupon, the contract was introduced in evidence as defendants' Exhibit C, which is a mimeographed document, beginning: [310]

"For the purpose of promoting the mutual interests of the parties signatory hereto, it is agreed between F. S. Buckley Door Co. and the Bay Counties District Council of Carpenters, as follows:

"The wages, hours and working conditions of the cabinet makers, carpenters and millmen employed by the F. S. Buckley Door Co. will be as stipulated in the agreement between the District Council of Carpenters, Millmen's Unions Nos. 42 and 550, and the Lumber Products Association, Inc., and the Cab-

(Testimony of E. W. Yates.)

inet Manufacturers Institute, Inc., Northern Division, which is as follows:

"Then presumably it is a mimeographed copy of that agreement and there is a paragraph that it might be well to read, paragraph 2 of this agreement, which I think has been read once before to the jury. It says:

"It is fitting that the wording of the Arbitration Board be here quoted and its purpose and intent be and is made a part of this Agreement: 'Maintenance of Fair Labor Conditions: It is the unanimous decision of the Arbitration Board that the new agreement should include a provision to the effect that it is deemed to be for the best interest of the community, in aid of the maintenance of fair working conditions, that the parties to the agreement adopt and abide by the business policy of refusing to handle any material coming from any mill or cabinet shop that is or shall be, working contrary to the conditions of said agreement'."

There followed the provisions of the agreement of 1938, and the following provisions not previously read to the jury:

"Memorandum as to payment of wages established by arbitration effective next pay day.

"The rate of wages established by Employer-Employee Agreement effective June 15, 1938, shall be paid in the follow- [311] ing manner:

"1. All employees subject to the Agreement shall be paid the new rate of wage retroactive to July 10, 1938.

(Testimony of E. W. Yates.)

"2. The payroll shall be made up so that the difference between the old rate and the new rate is on a separate check. The check covering the difference shall be endorsed at the time of payment by the Employee to the Employer and a receipt issued covering such check or checks showing name of employee and amount in detail, said receipt to be delivered to a representative of the Conference Committee Local Unions No. 42 and No. 550 Bay Counties District Council of Carpenters. A Memorandum receipt will be given to the employee if demanded. The check shall be applied to offsets arising from work subject to the old rate of wage as set forth in Paragraph 32 of the Agreement. The total amount so applied shall not exceed such offsets as agreed to by the Employer and the Conference Committee Local Unions No. 42 and [312] No. 550 Bay Counties District Council of Carpenters. The amounts of the offsets agreed to shall be in writing and signed by the Employer affected and the Conference Committee Local Unions No. 42 and No. 550 Bay Counties District Council of Carpenters. The endorsed checks shall be held intact for the Union's accounting.

"3. In the case of offsets not existing or having been paid off, then the checks shall be endorsed to the Conference Committee Local Unions No. 42 and No. 550 Bay Counties District Council of Carpenters in such manner as they shall designate. The Employer shall deliver said checks to a Representa-

(Testimony of E. W. Yates.)

tive of the Conference Committee Local Unions No. 42 and No. 550 Bay Counties District Council of Carpenters upon demand and receipt for same.

“4. All funds withheld by the Employer as offsets against agreed to jobs subject to old rate, unless completed by March 1, 1939, shall be released to the Union. Upon the completion of said jobs the Employer shall be refunded by the Union in the amount agreed to.

“5. Unadjusted matters shall be referred to the Joint Committee referred to in Paragraph 27 of the Agreement.

“6. In the event there exists work on which a refund is claimed and not agreed to by the Union, same shall be noted on the list agreed to as ‘The following jobs are subject to review as per paragraph 27 of the Employer-Employee Agreement.’”

Recross Examination

By Mr. Routzoff:

The mills that manufactured the material that was objected to by the unions were Washington Veneer, at Olympia, Washington, and Long-Bell Lumber Company, Longview, Washington. That is the material that the union stamped for us—the stock that they exempted. We had other stock in the house at Portland, that we had moved from Portland the early part of 1936. That material we bought from mills at Portland, the Jones Lumber [313] Company, and a little Company at The Dalles, Oregon.

(Testimony of E. W. Yates.)

"Q. Did you know at that time and do you know now whether or not some of those companies were organized under the CIO?

"Mr. Zirpoli: I object. I have not interposed this objection, but it seems to me it is irrelevant and immaterial.

"The Court: I do not think it makes any difference whether it was the CIO or AFL. Sustained.

"Mr. Rontzohn: Our point is, of course, if it did not bear the union stamp of the Carpenter Brotherhood of the AFL that we had a perfect right to keep it out.

"The Court: Objection sustained."

I never saw before Government's Exhibit 11-42 for identification, purporting to show list of mills in the Northwest that were CIO and those that were AFL.

Recross Examination

By Mr. Faulkner:

Doors sold to the Mullen Manufacturing Company were manufactured outside of the State of California. Slab doors were manufactured at Portland, Oregon. I don't recall where the other type came from. The doors didn't have the union label they came from out of the State.

"Mr. Tuttle: I just wanted to be sure that as to the rulings made, we have under the stipulation an exception.

"The Court: Yes, certainly. I repeat again,

Testimony of E. W. Yates.)

every ruling I make, every defendant has an exception to."

Mr. Zirpoli read from minute book of Local 42, Exhibit No. 7, Minutes of March 2, 1937, as follows:

"Brother Kelly reported on the last meeting of the conference committee stating that the mill owners had agreed to cease manufacture of materials for Buckley Door Company. B. A. Edwards also reported that he had contacted several contractors who had promised that they would not buy any of Buckley's products.' " [314]

WILLARD B. JEFFERSON

being called as a witness in behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Clark:

"My business is retail lumber in San Francisco, and have been in business here about 35 years. I handle lumber, millwork, paints, roofing, hardware. I handled lumber, millwork, patterned lumber in 1939, under trade name, Greater City Lumber Company. I was buying outside of the State in 1939. I think I bought door jambs from mills outside the State, late in 1938. I do not think I did in 1939. A door jamb is the piece the door hangs on—the side of the door

(Testimony of Willard B. Jefferson.)

opening that you hang the door on. Exhibit No. 155 for identification, is an invoice for a bill of door jambs from Long-Bell Lumber Company, representing a purchase I made from them.

"Mr. Clark: We will offer it in evidence.

"Mr. Faulkner: We object to it as irrelevant, immaterial and incompetent, and hearsay as to the defendants.

"The Court: Overruled.

"(The invoice was marked 'U. S. Exhibit No. 155.')

"Mr. Clark: I am going to read a portion of it, your Honor, so that the jury may know what it is about. This is an invoice on the stationery of the Long-Bell Lumber Company, Long-Bell Products, Kansas City, Missouri, sold to Greater City Lumber Company, 3123 Mission Street, San Francisco, shipped to same, Pier 40, San Francisco, California, dated December 31, 1938. It sets out:

" 'Douglas Fir

" '102 sets 1x5 2'8"x6'8" stops VG door jambs, per set, 64 cents, \$65.28.

" '200 sets 1x6 2'8"x6'8" 'T' stops VG door jambs, per [315] set, 77 cents, \$154.00.' Making \$219.28, plus California State tolls at 10 cents, \$219.63."

I received that millwork the early part of January, and put it in my stock in the warehouse. I was told, by a representative of the union—I believe his

(Testimony of Willard B. Jefferson.)

name was Helbing—not to sell it, or rather, not to bring any more in, that I couldn't sell it unless it had the union stamp on it. I was told, by a man who represented himself as coming from the unions, I would not be allowed to deliver these jambs to jobs in San Francisco, unless they had the local union stamp on them. I arranged to have them run here at a local mill and the stamp put on. I think it was the Acme Manufacturing Company. They put them through the mill. I don't know just what they did. They came back and had the stamp on. I saw the lumber before and after it came back. I saw no appearance of any work being done on it. It was manufactured according to a special size. If it had been rerun it would not have fit; would have been too small for the purpose for which it was intended. I have not attempted to buy any more millwork, patterned lumber outside of the State. I don't think I have had any more word from Mr. Helbing or the union representative. I am familiar with the price charged for this lumber and remember approximately the price charged for lumber of a similar kind bought from a local manufacturer. On the two items of door jambs, to have bought them locally would have been about one-third more than those invoice prices shown.

Cross-Examination

By Mr. Routzohn:

The lumber when it came did not bear the local union stamp. I think it did bear a stamp of some

(Testimony of Willard B. Jefferson.)

kind, but I am not sure. I could not say whether it bore the stamp of the United Brotherhood of Carpenters and Joiners of America. I never paid any attention. I couldn't say that I know the stamp. I have seen the label of the United Brotherhood a great many times. I don't remember if it [316] bore that stamp. I took particular notice that it did after it was rerun—the stamp of the local Millmen's Union. I don't know if that was the stamp of the United Brotherhood.

“Mr. Routzohn: Q. Was it non-union lumber that you purchased at that time?”

“Mr. Clark: I object on the same grounds. (Immaterial, irrelevant, and incompetent.)”

“A. As far as I know, it was.”

“The Court: Sustained.”

“Mr. Routzohn: That is all.”

ALBERT BERNHARDT

called as a witness in behalf of the plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Zirpoli:

I am a building contractor and have been for some 20 years. I am affiliated with Associated Home Builders of San Francisco. I am at present a director. I was president for 5 years until last year. I know

(Testimony of Albert Bernhardt.)

Dave Ryan and participated with him in a conference with members of my association in 1938. There were many conferences based on negotiations in regard to a labor contract between representatives from Associated General Contractors, East Bay Building Council, Marin County, San Mateo County, and ourselves. There were representatives of the carpenters of San Francisco, Marin and all other Bay counties. There was Alexander Watchman. I recall the last meeting at which we reached an agreement.

“Q. Will you tell us, was anything said after you reached that agreement with respect to any matters not in the agreement?”

“A. Well, the statement was made——

“Mr. Faulkner: The same objection heretofore made.

“The Court: Overruled.

“Mr. Zirpoli: Q. By whom?

“A. I could not say, I do [317] not recall.

“Q. Was it a union representative or a building representative?

“A. It was one of the representatives from the union.

“Q. What did the representative of the union say?

“Mr. Routzohn: We object to that as being immaterial and irrelevant.

“The Court: Overruled.

“Mr. Routzohn: We certainly should know the individual who is supposed to have made this remark, or we could not be bound by the statement.

(Testimony of Albert Bernhardt.)

"The Court: I am sure that the witness will name them if he remembers the names.

"A. I can't recall who made the statement in 1938.

"Mr. Zirpoli: Q. Was Mr. Ryan present?

"The Court: The objection is overruled."

A statement was made at the end of the negotiations that we had overcome all our difficulties up to now and while it was not specifically put in the agreement that it would be understood that we would have no further trouble with, or no trouble with any of the stuff from the north. We were talking about elimination of our difficulties. There was the wages and hours and working conditions, and the demand of the Union representative for the scale of wages they were asking, and many things we wanted. I think we were in negotiations for about six weeks, but those were the main points we discussed. No reference was made to bringing in lumber from Washington and Oregon into the Bay district, except this last statement which was to the effect that we had all our difficulties ironed out, and while it was not a specific part of the agreement it was understood that we would not have any difficulties with the material from the north.

EMORY J. NUTTING

called as a witness in behalf of plaintiff, was duly sworn and testified as follows: [318]

Direct Examination

By Mr. Burdell: *

I am in the planing mill business and have been for 32 years. I manufacture building materials, all kinds of wood products, including millwork and patterned lumber. My company was a member of Lumber Products Association, I think from around 1936 until 1938 or 1939. We were a member in 1936, during the period they were negotiating an employer-employee agreement. I attended meetings of the L. P. A. during that period, for the purpose of coming to some agreement or understanding with the unions as to wages and conditions. No union representatives were present. They were meetings of the L. P. A. alone. Mr. Carl Warden and Mr. Jack Hart were appointed, to meet with union representatives about the matter, a committee to negotiate with union officials. They reported back their negotiations with the unions to the members of the L. P. A. I recall members of the L. P. A. at that time. There was Acme Manufacturing Company, Hart Mill & Lumber Company, Eureka Sash & Door Company, my firm, Herring & Nutting, Sage & Wilder, Warden Bros. and Liberty Mill & Cabinet Shop, and Branning Street Planing Mill. Charles Monkton represented Acme; J. A. Hart, Hart Mill & Lumber Company; Carl Warden and his father, represented Warden Bros.;

(Testimony of Emory J. Nutting.)

Mr. Wiley and Mr. Gustafferson, Branham Street Planing Mill; Mr. Holmes for W. P. Holmes Company; Jesse Sage, and sometimes Mr. Wilder, for Sage & Wilder; Mr. Tanklage, for Liberty Mill & Cabinet Shop.

"Q. Now, Mr. Nutting, do you recall the substance of what Mr. Warden and Mr. Hart reported back to the members of the L. P. A. regarding their negotiations?

"Mr. Faulkner: We object to that as immaterial, irrelevant, and incompetent and hearsay as to the defendants.

"The Court: Overruled. What did they report back?

"A. Well, they reported back that if we agreed to the conditions [319] that the unions wanted the union would do all in their power to keep all of the work here."

That they would keep the millwork products that were manufactured here, we would make it here.

Exhibit 156 for identification (1936 agreement) is a copy of the agreement entered into between the union and the millmen, signed by Mr. Hart for the members of the L. P. A., whom I have just named, was introduced as U. S. Exhibit No. 156.

Cross-Examination

By Mr. Routzohn:

The firm of Herring & Nutting has been in existence from 1928. I first started in the planing mill

(Testimony of Emory J. Nutting.)

business in 1909, with Spencer Street Mill which remained under the name, Spencer Mill, until 1928, when Mr. Herring bought my partner's interest and we changed the name to Herring & Nutting. I have been a mill owner since 1909, engaged in practically the same work as at the present time.

"Q. Do you recall whether or not back in 1917 you had an agreement with the union men who represent the Carpenters Brotherhood?

"Mr. Burdell: I object to that as immaterial and not proper cross examination.

"The Court: What year?

"Mr. Routzohn: 1917, your Honor.

"The Court: Sustained.

"Mr. Routzohn: Q. Did you have an agreement with the unions in 1932?

"Mr. Burdell: Same objection.

"The Court: Sustained."

I believe we had an agreement with the unions in 1935. I couldn't positively tell whether there was a mill owners' association in 1935. We had several associations and on account of business depressions they would break up and then would start [320] again. Our present association is known as Lumber Products Association. We had a prior association—I don't recall the name. I am not sure of dates, but for a long time the mills worked open shop and then there was a start where we went union shop. From that time on as long as we were union shop we always had some kind of meetings with the unions. An

(Testimony of Emory J. Nutting.)

open shop is what they termed the American plan. It meant you hired whomsoever you pleased and paid no attention to the unions. We were an open shop for a long period of time. It went back somewhere around the early '20s. The unions were always trying to get the men organized. Then they finally did and made demands on us which we agreed to. We agreed to unionize our shop, I think somewhere around 1934 or 1935. After that we had negotiations with representatives of the unions. A committee of the mill owners would meet with a committee of the union men. The idea was to facilitate negotiations with the representatives meeting and save us the trouble as individuals to meet with them. I know there were meetings of representatives of the mill owners with representatives of the unions in 1936. The unions were asking for a raise in wages in 1936. The mill owners got together and named representatives who should negotiate for all the shops. I remember Mr. Hart and Mr. Warden were two representatives of the mill owners. There might have been more. It was the purpose of these negotiations to attempt to arrive at some agreement. I would say my best recollection as to the period of time covered by the negotiations was 3 months.

“Q. Three months. During all of that time, Mr. Nutting, there was a dispute on, was there not, between the unions on the one hand and the mill owners on the other as to the rate of wages?

“Mr. Burdell: Just a moment. That calls for a

(Testimony of Emory J. Nutting.)

conclusion of the witness and is improper cross examination and immaterial.

"The Court: Sustained. [321]

"Mr. Routzohn: Q. Was there any other dispute on at that time?

"Mr. Burdell: Same objection.

"The Court: Sustained.

"Mr. Routzohn: I haven't asked my question yet.

"The Court: Well, the question is objectionable so far as it has gone, 'Was there any other dispute?'

"Mr. Routzohn: Q. What were these negotiations that lasted three months?

"Mr. Burdell: Objected to.

"The Court: It is quite clear the negotiations related to wages and with reference to an agreement and it was signed. Isn't that quite plain? Why take up time cross examining on that subject?

"Mr. Routzohn: If your Honor thinks I am taking too much time, I will desist.

"The Court: Well, I think it is quite clear what you are trying to show by this witness.

"Mr. Routzohn: Yes. Your Honor in the very beginning told us we would have to establish that there was a labor dispute. That is exactly what I am trying to show.

"The Court: You have asked him if there was a labor dispute, which you have no right to do.

"Mr. Routzohn: The witnesses have been asked for many a conclusion at this trial, I have noticed.

(Testimony of Emory J. Nutting.)

"The Court: That may be so."

I don't think there was a strike in 1935. The agreement was signed by representatives of our organization on September 21, 1936. There was no other demand made that I know of, after we signed this agreement. I believe that they had negotiations right along. I didn't ever take that as disputes. Demands or requests continued, on the part of the unions, after [322] we signed the agreement calling for negotiations between mill owners and the unions. We had negotiations in 1937. I don't know what they pertained to. We had negotiations in 1938. They always met for the good of each other. In other words, they would work for things that were mutually advantageous. There was a larger wage scale granted in 1938, but I couldn't tell you what date that was. I don't know what gave rise to the negotiations in 1938. I know in 1938, they finally agreed to arbitrate their differences and there was an arbitration board appointed. I know there was an arbitration award in 1938, which was made after there had been negotiations over a period of months. I don't know that certain mill owners refused to accept the award. I dropped out of the association and don't know what they were doing in about 1938 or 1939. I don't remember of any strikes following the arbitration award in 1938. There was no negotiation with me in 1939. I recall there were negotiations with Lumber Products Association only by hearsay. I believe there are some negotiations going on now.

(Testimony of Emory J. Nutting.)

"Q. Yes, and in 1941, throughout some five or six months of this year, even up to the present day, isn't there an arbitration board sitting for the purpose of determining the disputes that are on at the present time between the mill owners and the unions?"

"A. Yes."

"Mr. Burdell: Object to that as irrelevant."

"Mr. Routzohn: That is all."

"The Court: The objection is sustained and the answer may go out."

"Mr. Routzohn: Please mark an exception."

"The Court: You have it."

Minute books marked U. S. Exhibit No. 157 and U. S. Exhibit No. 158, being records of Alameda County Building and Construction Trades Council were introduced in evidence, subject to a motion to strike, should they not be connected up.

"Mr. Burdell: I desire to read from Exhibit 157, the [323] minutes of February 28, 1939, 'Brother S. J. Donohoe. Mr. Chris M. Winger, Manager of the Pyramid Lumber Sales Co. appeared before the Board at the request of Millmen's Union No. 550 to show cause why he should not be placed on the 'We Don't Patronize List.' Business Agents O'Leary and Patterson stated their case against Mr. Winger, relative to his importing unfair lumber into the Bay district. Mr. Winger stated his case and admitted the charges were true, but assured the Board it would not occur again. Recommended that Mr. Winger be notified that unless he fails to live up to the agree-

(Testimony of Emory J. Nutting.)

ment of the Millmen's Union, Teamsters, Clerks and Lumber Handlers, and Building Trades, he will be placed on the 'We Don't Patronize List.' (Concurred in.)"

"Mr. Burdell: At this time I would like to read from Exhibit 158.

"The Court: What is that?

"Mr. Burdell: This is the other book we had produced.

"The Court: Are there two volumes?

"Mr. Burdell: There are two volumes. This is page 20:

"Board of Business Agents"—

"Mr. Todd: Will you give the date?

"Mr. Burdell: I am just about to read that.

"Board of Business Agents met in regular session on March 11, 1940, Brother Kelly presiding.

"Mr. Brown, of Ready Cut Homes, appeared before the Board at the request of the Carpenters' Union in regard to information on the Aladdin Ready Cut Home, which is being placed on the market. Recommended that the subject be further investigated by the Carpenters' Union and the Building and Construction Trades Council. (Concurred in.)"

EDWARD A. ALLEN

called as a witness in behalf of plaintiff, was duly sworn and testified as follows: [324]

Direct Examination

By Mr. Clark:

I am in the retail lumber business. My firm is Allen & Dettman Lumber Company. I have been in the lumber business 36 years, handling mostly building material, coarse construction work. We handle mill-work and patterned lumber, to complete a full bid. We handle soft wood fir, such as is used in a large assembly room. It is not the material that is put on top, the finish.

We purchased material from outside the State in 1939. I remember a purchase in 1939 covered by the paper marked U. S. Exhibit 159 for identification. We made a purchase in 1939 from Pope & Talbott Company, who have about three mills in Washington. It was tongue and groove used for roofing, and that is not a dry grade of lumber. Dried grade of lumber is lumber treated, kiln dried to take all the moisture out of it. For that reason, it is not put in flooring, but in this case, this green lumber they could use on a roof, because there is a covering over the top. The lumber was for roofing in this case. It arrived by boat approximately two blocks away from our plant in San Francisco. It was hauled into our yard and there assembled for delivery, by truck, to South San Francisco. We received the lumber in our yard. It did not have a stamp and a man went to the

(Testimony of Edward A. Allen.)

yard and said: "That lumber would have to be stamped before it was delivered to its destination." I could not say who it was—who told me that. I don't remember if he identified himself as being connected with any particular group. He told us we would have to have the union stamp on it.

"Mr. Róutzohn: I will ask that all of this testimony be stricken out because he has not identified anyone connected with the defendants in this case.

"The Court: Denied.

"Mr. Clark: We will connect that up later, your Honor. [325]

"The Court: Very well."

We had to send the lumber to a manufacturing mill to put it through the machine and put the union stamp on it, and it was hauled back to our yard and delivered to the destination. It was sent to Christianson Lumber Company, who placed the stamp on it. They did nothing else to it as far as remanufacturing it. I believe they charged \$1.75 per thousand feet. After we got it back we put it on our trucks and delivered it to destination. I believe it was something like 28,000 or 30,000 feet of lumber involved in that rerun.

I have been in business with our firm for seven years and connected with Pope & Talbott since 1906, 30 years.

"Q. Are you familiar with the price in San Francisco of that same grade of lumber that you purchased, if it had been manufactured by a local mill?

(Testimony of Edward A. Allen.)

"Mr. Routzohn: We object to that as being immaterial, irrelevant, and incompetent.

"The Court: Overruled. If you know.

"A. At that time?

"Mr. Clark: Yes—Do you mean the differential?

"Q. Between the lumber which was purchased here from Pope & Talbot and the price of the same grade of lumber, here in the San Francisco area, from a local mill or shop?

"Mr. Routzohn: I will object to that for the same reason.

"The Court: Overruled.

"A. This lumber here in question is green lumber; if that lumber was taken out of San Francisco stock, it might carry two different prices, for the simple reason, if that lumber had been brought into the yard and placed in piles to dry, and then taken out and sent to a mill, it might carry a different percentage than that same lumber if it had not been placed in these piles.

"Q. What would have been the price had it been placed in piles [326] that you just described, the difference? A. Forty or fifty per cent.

"Q. If it was taken straight from stock, not put in piles and worked on immediately, what would be the percentage of difference?

"A. 25 or 30 per cent."

(Testimony of Edward A. Allen.)

Cross-Examination

By Mr. Routzohn:

My firm is not connected with Pope & Talbot Company in Washington. We purchased that lot from them, they are wholesalers. When I first started in the lumber business, in 1906, I was employed by Pope & Talbot about 25 years. The concern was turned over to the McCormick Lumber Company and when it gave up business, the former employees of both concerns formed Allen & Dettman Company. We bought this particular shipment of lumber from Pope & Talbot. I believe it came from Port Gamble, Washington. I don't know whether the mill was organized, either CIO or AFL. The lumber that came down here was not stamped with the union label of the United Carpenters and Joiners of America. I couldn't say if it was non-union lumber. It did not bear a union stamp but the remanufactured did.

(By Mr. Clark:)

"Ladies and gentlemen, I am reading from the minutes of the defendant Local 42, Exhibit 8, as of February 21, 1939:

"7,000 feet of T&G to be used for roofing at South City supplied by Allen & Dettman will be rerun through machine."

"Now, your Honor, we would like to read from Exhibit No. 7, which was previously introduced in evidence, the minutes of the defendant Local Union No. 42, meeting of October 5, 1937:

◆ 'Conference Committee: Reported that 2x6 and T&G flooring were being put on the Fairgrounds. A meeting for discussion of this matter was held with the mill owners.' [327]

"Now, your Honor, from the minutes of the defendant Local 42, being Exhibit No. 8, from the minutes of January 18, 1938, of the defendant Local No. 42:

"'Brothers Reinhart & D. Johnson reported Shevlin Pine or Knotty Pine, milled lap, rustic, and milled Ceiling being brought in from the North by Doelger and Rolando Lumber Company. The Conference Committee was requested to take action on the matter.

"'The chair appointed the following as members to the 'Agreement Committee' to meet with the officers of this union for the formulation of plans for a new agreement with the mill owners. A. W. Edwards, D. Johnson, D. J. Edwards, Otto Sammett, J. Westby, A. Weiss, W. P. Kelly.'

"Now, the minutes of the same local, February 8, 1938:

"'Matter of dimension lumber, panels and stock moldings and doors also discussed. Opinion being that these items should be taken from 'exempt' list.'

"Now, the minutes of the same defendant of the meeting of March 1, 1938:

"'District Council of Carpenters delegates reported Walker job of matched end T&G was to be run by E. K. Woods of Oakland.'

"The same minutes of the same union as of the meeting of March 15, 1938:

"Good of the Order: Brother Byrnes reported dimension lumber cut to length and bevels being brought in by boatloads for the Exposition construction. Referred to B A for investigation."

"The minutes of the same local union for March 22, 1938:

"The Conference Committee reported on two meetings held last Friday morning and Monday afternoon with a group of mill owners for discussion on 'exempt list' surfaced lumber. No [328] definite conclusions having been arrived at, further meetings were to be scheduled."

"The minutes of the same defendant from the meeting held April 19, 1938:

"B A Report. Christianson Lumber Co. pickets on Northern shipment 11½ x 6 T&G. Also Coos Bay 2 x 6 shipment picketed."

"Brother Arnold reported jams *ect.* coming in from McElroy Cheim. No stamp."

"Discussion arose on Wheeler and Osgood doors being molded and stamped by local stamp No. 6."

"Brother Helbing stated that mill stamp was not properly enforced and that the carpenters were not demanding stamped material. Fight of Local No. 42 was to see that carpenters do enforce stamp. Pledge to mill owners to enforce stamp not carried out, and it may become injurious to coming negotiations."

“The question of stamp enforcement consumed a lengthy period of time, ways and means argued to enforce same.

“Brother Knowles stated that doors in question in regards to not being stamped, one of same be bought and brought up to the local as evidence.

“Santa Fe job recalled that Brother James Ricketts had promised that carpenter would not install any unstamped materials.”

“The minutes of the same defendant of April 26, 1938:

“Motion made and seconded Brother Fromm, that material at Christianson be run through the machines. Carried.”

“The minutes of the same defendant from the meeting of May 10, 1938:

“B A reported he made two trips to Fairgrounds, also stated that no more trim for Doelger was coming from up North. He also stated he would have the brothers here to talk on the 1½ x 6 T&G. Cards were sent.”

“Also minutes of the same defendant, Local No. 42, meet- [329] ing of May 24, 1938:

“B A reported that our new agreement had in it to strike out all exempt list, especially sash and doors.”

“The minutes of the same defendant, Local Union No. 42, the meeting of July 12, 1938:

“B A Edwards reported all T&G not on the exempt list, on the shoal was to be sent back and run through machine.”

"Same minutes for August 2, 1938:

"Conference Committee: Brother Kelly reported that the District Council of Carpenters and Building Trades had approved our new agreement.

"Minutes of the same defendant for August 16, 1938:

"A car of T&G from Daugherty Lumber Company slipped by and had gone over to the shoals.

"Oakley mill received a carload of molding and casing it had no label, however it was made in a forty-cent mill in the North."

"August 22, 1938:

"Daugherty Lumber Co. have a shipload of 11½ x 8 inches the rough to make T&G in a San Francisco mill. Also these people have six loads of 1 x 8 T&G on the dock. A picket watching this T&G so it is not slipped over to the shoals. Asking all members to put the stamp on all millwork. P M was going to dump a load of millwork without a stamp, forced them to take the load back to Santa Clara."

"The same local, minutes for the meeting of September 13, 1938; this is a report by B. A. Wilcox:

"Will make a trip over to the shoals Wednesday to check on the knotty pine sent there by the Northern Pine Company."

"Conference Committee: Brother Kelly reported that Brother Ryan had gone back to General Office to appear before the executive board to state the case of the millmen in the Bay [330] Dis-

trict. May be trouble in Oakland and want to be ready for it. Received a phone call from the shoals stating that knotty pine for seven houses was being unloaded without a stamp. Recommends that Brother Edwards be placed back on the job as Assistant Business Agent.'

'Minutes of October 11, 1938:

"'Brother A. Edwards: Mr. D. N. Edwards is fighting for his 11½ cents of sales. Don't think he has control of association in Oakland. Said at one time he would upset the agreement. If we take \$8.50 would he (Mr. Edwards) throw out his exempt list. No answer. Brother Cambiano is not in favor of Mr. Edwards' program.'

'October 11, 1938:

"'Brother Kelly: Have \$21,000 in on assessments. Read a letter from the secretary of Mill and Cabinet Associations. That we concur in the recommendation of committee to give the shops and mills in San Francisco and San Mateo protection.'

"Minutes of the same defendant of October 18, 1938:

"'Jones Lumber Company received a load of knotty pine from the North; and will go there in the morning.'

"That is the report of officers and delegates and B. A. Wilcox, business agent.

"The same minutes of the Local Union 42 for the meeting of November 1, 1938, the shop committee report:

“Brother Reinhart: A carload of doors for Buckley from the North. B H stamp No. 6.”

“The same minutes for November 15, 1938:

“Cambiano, O’Leary and himself (Wilcox) signed up Mr. Edwards in Oakland.”

“The minutes of the same local union for November 22, 1938:

“Visitors: Mr. Ennes, secretary of Cabinet Manufacturers [331] Association, was a visitor, and president Lidley allowed him the floor. Mr. Ennes said he appeared before Local No. 42 in place of Harry Gaetjen, secretary of the mill owners. Mr. Ennes’ talk was greatly received and Brothers Voight, Brock and Brothers Miller, Kelly, Fate asked him (Mr. Ennes) plenty of questions. Mr. Ennes answered these questions. Brother Helbing asked president Lidley to excuse Mr. Ennes and the local take the matter of Mr. Ennes’ suggestions later on.”

“Continuing to read from the same minutes of Local 42, the meeting of December 13, 1938:

“Communications: From Cabinet Manufacturers Institute of California, Inc. and Lumber Products Association, Inc., request Local No. 42 to place another business agent in the field, and would like to have this cooperation very soon. Read and placed in the hands of committee dealing with the matter.”

“The same date, report of officers, delegates and committees:

“‘B A Wilcox: Smith Lumber Company have a load of 1x8 T&G from the North. Load of 2x3 for a job on Townsend Street was to have the union label. Shop in Oakland was going to run this material, did not have a stamp, will be milled in San Francisco in a union shop.’

“‘The minutes of December 13, 1938; this is the report of officers:

“‘B A Wilcox’—‘state mill committee meeting at Fresno, Brother Kelly: There were about 40 delegates at the meeting. L A had no delegation. The secretary of District Council of Carpenters was present. San Jose, Local No. 262 presented a resolution to oppose outside millwork to come in California. Brother Blanchfield reported on the job at the State Capitol how the Sierra Mill of Sacramento sublet the doors to a firm in Wisconsin with a difference of \$9,000 in the bids.’ [332]

“‘The meeting of January 3, 1939, of the same defendant:

“‘Report of B A Wilcox: T&G for the Shoals to be run in San Francisco.’

“‘The same minutes of Local 42 for the meeting of January 17, 1939:

“‘New Business. Brother Kelly reported of a meeting to be held Wednesday afternoon, January 18th. Brother Ryan secretary of District Council called this meeting for the purpose of presenting the agreement approved by the General Office before the Cabinet Association and Lumber Products Inc. in San Francisco. The committee of No. 550 and No. 42 should meet and report back to the local

unions. We should try to get rid of the exempt list."

"The meeting of February 7, 1939 of the same union:

"Spec. B. A. Helbing: Re: The case of Fred Warden and Son taken up with the building trades and will place Warden on the unfair list. Had to take this step to bring Doelger around. Davis Hardwood is supplying material for a job on Washington and Presidio. Davis has about 100 six-panel doors made in the North without the label, and was going to try to slip them over on this job. Now his story is he will send these to the country and make the doors for San Francisco use. Liberty Mill supplying the front doors with a label for this job. Symon Brothers are not buying doors in this locality, stated the price too high. Said to buy lumber and make the doors in the future. Had a meeting with John O'Connell, secretary of Labor Council, and business agent of Coopers re: to the Winair plant. At the present time have 17 coopers and 2 millmen. All men working on stickers, matchers and resaws should belong to this union. West Bay Lumber Company in San Mateo have one-half carload of knotty white pine coming in this week and loads in the yard without a stamp. Business of San Mateo and business agent Helbing are going to take this matter up this week. Report received in re: to the mill on Army Street. [333] Brother of Local No. 42 has a small shop in San Mateo. * * * The Nicolai Door has glass

workers and millmen working on unfair material. Men were allowed to work on this material at the time it was on the exempt list. Mr. Yates of the Buckley Door Company stated they will have all their material run in this locality in the future. The Building Trades could have stopped some of the material coming into this locality to be used on PWA work if they had protested earlier. Recommend that Brother Helbing take up the matter of the Nicolai Door and report back next Tuesday.

"The meeting of the same local, February 14, 1939:

"Report of B A Helbing. West Bay Lumber Company have a great deal of molded knotty pine from the North. Brother Simmonds and myself went to these people and explained the situation. P M received the work on the Samuel Gompers School. Visited Sacramento with Brother Wilcox. Had taken up the matter re the Bond Stores Inc. with the Building Trades. Cleveland Wrecking Co. does not want to do business with this union. Davis Hardwood re: to doors on the Washington and Presidio job. Davis trying to say he made these doors part of the one hundred he had in the mill without the stamp he promised to send to the country last week. Pacific Gas Appliance have a job on the Shoals, cannot contact party in charge. Phoned Mr. Ennes in re: to a shop on 17th and Folsom reported unfair: Re: the Nicolai Door. This shop is organized. Party knows all about the agreement.

Does not sell doors to mills or contractors, only lumber yards. Secretary of Mill Owners stated let's get new agreement then proceed. * * * Carload of milled material from the North for the Posey Lumber Company told these people that material was not allowed, they promised not to have any more shipped into San Francisco.'

"The meeting of the same local for March 7, 1939:

" 'Reports of officers, delegates and committees. B A Wilcox reports: Sent out about eight or ten men to jobs this [334] week. * * * Attended meeting Friday with mill owners.'

"Report of March 28, 1939:

" 'B A Wilcox: Spending most time going around and making reports on the millwork used by the building contractors. All 100 per cent to date. Attended meeting this p.m. at the Mason Hall in regards to the Fed. Housing Program: Millwork to be made in S. F. Routine. B A Helbing: Going around checking on the shop steward committee reports.' "

JAMES L. McNALLY,

called as a witness in behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Burdell:

I am court reporter, Superior Court, San Francisco. I was formerly secretary-manager of Build-

(Testimony of James L. McNally.)

ing Trades Employers' Association, from November, 1937, until the early part of 1940. Building Trades Employers' Association is still in existence, but inactive in operation. It was an organization composed of the different employer associations engaged in the building industries in San Francisco, formed principally for the purpose of fostering and improving labor relations. Employer associations members of the Association were: The Associated General Contractors of America, Central California Chapter—AGC, Central California Chapter; the Master Plasterers' Association, the Cabinet Manufacturers' Institute, Lumber Products Association, The Associated Roofing Contractors, the Steel Erectors' Association, the Reinforced Steel Concrete Institute, the Sheet Metal Contractors' Association. That is all I can recall at the present time. There were a few more. Each of these associations had delegates that attended meetings of the B.T.E.A. Mr. Hart was the delegate from the Lumber Products Association; Mr. J. G. Ennes from Cabinet Manufacturers' Association. As secretary, I kept minutes of the proceedings of [335] the B.T.E.A. as part of my regular duties. I made notes during the meetings in the regular course of business. The minutes are transcriptions from the notes made within the course of a day or two by myself. Minutes referred to are U. S. Exhibit No. 160 for identification. Letter marked U. S. Exhibit No. 161 for identification is

(Testimony of James L. McNally.)

a letter addressed to Building Trades Employers' Association, to my attention.

"Mr. Burdell: I understand that it is stipulated that this is Mr. Ennes' signature, and I want at this time to offer this letter in evidence.

"Mr. Faulkner: We object to it as immaterial, irrelevant, and incompetent, and hearsay as to the defendants, dividing the objection as to Mr. Ennes as an individual, and any other defendant represented by it, and upon the further ground that there is no foundation laid that communications between a member of the Building Trades Employers' Association is a part or parcel of the conspiracy charged here. In other words, there is nothing illegal about all of the employers in San Francisco having an organization among themselves for their own protection, and the things that happen in that organization are not part and parcel of the conspiracy charged in this indictment, and could never be; and we submit that it is absolutely hearsay as to the defendants. Of course, as to Mr. Ennes, individually, it is not hearsay, but it would be immaterial as to him and hearsay as to all other defendants in the case.

"The Court: Overruled.

"Mr. Routzohn: The same objection.

"The Court: Overruled."

(Testimony of James L. McNally.)

Cross-Examination

By Mr. Faulkner:

I am the James L. McNally referred to in the paper I identified. The J. G. Ennes referred to in the letter is [336] Mr. Ennes sitting at the table. I received the letter in the regular course of business. No reply was made to it.

Thereupon, the letter was read, as follows,

By Mr. Faulkner:

“ ‘Cabinet Manufacturers Institute of California,
Northern Division 411 Call Building, San Francisco,
July 20, 1938.

“ ‘Building Trades Employers Association,
666 Mission Street
San Francisco

“ ‘Attention Mr. James L. McNally, Secretary

“ ‘Gentlemen:

“ ‘We are handing you a copy of the Arbitration Board Award. The purpose of this letter is not to deal in retrospect but to be forward looking.

“ ‘The Employer member of the Board and their Technical Advisor signed the award as dissenting to the rate of wage. This is not to be in any sense understood as meaning that the Employers are not going to carry out the award in spirit and in fact. They are, and have signed a contract embodying the Award.

“ ‘Arbitration is a medium of adjusting economic differences between the Employers and Organized

(Testimony of James L. McNally.)

Labor to the end that the Employer, Employee and the Public be saved the consequences of industrial strife.

“We have subscribed to ~~that~~ policy. The B.T.E.A. agreement with Organized Labor as to arbitration, of which we, as members, availed ourselves, is in our opinion, epochal as a mass arbitration agreement.

“Neither in opening argument nor in rebuttal could we hold that the employees of Mill and Cabinet Shops were less skilled than certain other crafts of the construction industry receiving substantially higher rates of wage established by negotiation and arbitration. Nor could we give factual reasons for the present spread between the carpenter's wage as compared to [337] the past spread. Excepting that since 1921 we have had to face in our bidding economic horizons having lower rates of wages than those set up by our agreement and to be competitively sound, our rate of wage should not be appreciably higher than that of the competition we have to meet.

“The Arbitration Board has handed down an Award of ~~\$9.00 and \$8.00~~, which is the all time high in rate and the highest in percentage when compared to the carpenters' since 1921. The Arbitration Board has also said:

“‘Maintenance of Fair Labor Conditions.

“‘It is the unanimous decision of the Arbitration Board that the new agreement should include

(Testimony of James L. McNally.)

a provision to the effect that it is deemed to be for the best interests of the community, in aid of the maintenance of fair working conditions, that the parties to the agreement adopt and abide by the business policy of refusing to handle any material coming from any mill or cabinet shop that is or shall be, working contrary to the conditions of said agreement.' "

" 'The rate of wages and the paragraph referred to are reciprocal, and that we may live up to the terms of the award we ask for the cooperation of all responsible parties.

" 'This award, and in our opinion, all recent awards and agreements point clearly to the necessity of the B.T.E.A. functioning as a repository of certain factual economic experiences rather than opinions.

" 'We expressed our viewpoint along this line at the last meeting, so will not go further into the matter here.

" 'We wish to emphasize that this letter is not to be in any sense construed as critical of the award of the Arbitration Board. We hold the Board prevented strife, once embarked upon, the consequences of which are limitless. The neutral Chairman measured to the full stature of what we deem a neutral Arbitrator should [338] be and the respective Arbitrators and Technical Advisors of the Employers and Employees used the 'rule of reason.'

(Testimony of James L. McNally.)

“We take this occasion to thank the B.T.E.A. for the material assistance they gave us in this matter.

“Very truly yours,

“CABINET MANUFACTURERS INSTITUTE OF CALIFORNIA, NORTHERN DIVISION,

By J. G. ENNES, Manager.”

“(The document was marked in evidence as ‘U. S. Exhibit 161.’) The neutral arbitrator referred to in the letter was Judge Walter Perry Johnson, a Superior Judge of the City and County of San Francisco.

JAMES DAVIS

called as a witness in behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Burdell:

I am vice-president of Davis Hardwood Company, wholesalers and dealers in hardwood lumber, millwork, and who also have a planing mill. We buy and sell lumber and also manufacture the lumber into millwork; We have our own machinery. Our company is not a member of Lumber Products Association, and it has never been a member of that association. It was invited to join that association

(Testimony of James Davis.)

by Mr. Gaetjen, around 1938, 1939. He asked at three or four different times for us to be a member.

Government's Exhibit for identification 162 was sent to me through the mail by Mr. H. W. Gaetjen, at about the time he contacted us relative to joining the association.

"Mr. Burdell: I offer it in evidence.

"Mr. Faulkner: We object to it as incompetent, irrelevant and immaterial, not an act or declaration pursuant to the charge in the indictment, and hearsay as to the employer defendants here on trial; not binding upon them. [339]

"Mr. Routzohn: The union defendants join in the objection.

"The Court: Overruled.

"(The letter was marked 'U. S. Exhibit No. 162.')

"Mr. Burdell: With respect to this letter, your Honor, I will read it at this time, if I may.

"The Court: Very well.

"Mr. Burdell (reading): 'Lumber Products Association Inc.

" 'Rm 439 Call. Bldg.

Yukon 2081

San Francisco, California

September 26, 1938

"Gentlemen:—

" 'The Lumber Products Association Inc. was organized in June, 1938, by the Planing Mill owners so as to discuss as a unit with the District Council of

(Testimony of James Davis.)

Carpenters the question of a new working agreement.

“ ‘Being unable to come to a satisfactory understanding it was agreed to arbitrate the question, the Building Trades Employers Association was asked to name the Arbitrator, which it did by naming Walter Perry Johnson, a retired Superior Judge of this city as the Arbitrator.

“ ‘After several hearings he handed down his decision on July 15, 1938, awarding a dollar a day increase in wages with a protective measure that work should not be handled by the carpenters unless made under the same conditions, which for obvious reason should be of great benefit to us, and with the cooperation of labor we are working for the betterment of the Mill Industry, namely, the prevention of Bid Peddling by contractors or builders, the respect of Bids given before the award of a contract and the discouragement of Bid cutting, along with all the rest of menaces of the game.

“ ‘We have established an office in Room 439 of the Call [340] Building, 74 New Montgomery Street, San Francisco, the undersigned being Secretary. Your membership is hereby solicited. I would appreciate a visit or call from you to discuss the details of our organization.

Yours very truly,

LUMBER PRODUCTS ASSOCIATION INC.

By H. W. GAETJEN

Secretary”

(Testimony of James Davis.)

Cross Examination

By Mr. Faulkner:

We are in the hardwood lumber business and sell doors and moldings, veneers, plywood; we have our own planing mill; general millwork. We sell cabinet makers. I know Mr. Emanuel—we deal with L. & E. Emanuel and have for the last forty years. We have dealt for many years, I will say twenty years.

“Mr. Zirpoli: May it please your Honor, at this time I respectfully ask leave to read from Exhibit No. 6 in evidence, which is the minute book of Millmen's Union No. 42, the volume covering the period from April 4, 1939 to November 26, 1940. I will first read from the minutes from April 4, 1939:

“‘Posey Lumber Company received a carload of knotty pine, told to have it re-run.’

“‘I now refer to the minutes of April 11, 1939:

“‘Brother Cambiano, of the General Office, spoke on the matter of the new agreement, stated what happened at Santa Clara will not happen again, the matter pertaining to the exempt list will be a battle. Mr. Ennes called up and wanted the *close* shop paragraph out for fear of court trouble. P.M. Agreed to arbitration clause. Some of the mill owners want a bigger exempt list.’

“‘The next meeting was the meeting of May 9, 1939: [341]

“‘Stopped 31,000 feet of T. and G. in San Mateo that was re-run at the Coos Bay Mill in Oakland. This mill has hired union men at all times but does

not have a Union Label. Some of the brothers asked B. A. Helbing about the non-union sash and molded knotty pine coming into S.F.'

"The next is a meeting of May 16, 1939:

"It was reported that the Greater City Lumber Co. was bringing milled material in S.F. and B. A. Helbing take the matter up with these people.'

"The meeting of June 20, 1939:

"Conference Committee: Brother Helbing stated that the Gen. Pres. will not agree with the last two lines in the agreement in paragraph 2. Gen. Pres. said these lines leave it too wide open for anything to come into the locality.'

"Meeting of June 27, 1939:

"Conf. Comm. Brother Miller reported had a meeting Thursday evening and wired Cambiano, who was in Los Angeles, when he could come to San Francisco. Had a meeting Sunday morning Cambiano present. Brother Helbing reported Ryan, Wilcox and himself visited the mill owners. Bid arrived at in San Francisco that there will not be any exempt list. Expecting a communication from the Secretary of the Cabinet Association and Secretary of the Mill Owners. This side of the Bay agreed to go along.'

"Meeting of September 26, 1939:

"Was asked by Brother Edwards about the material on the Bond Clothing Store. Brother Cole reported it came from the East, and Brother Urge stated the same. Brother Lyttle stated the Royal Showease Co's address was stamped on the backs

of the wall paneling. If this is true and this material was made in the East the Royal people can be brought before the Conference Committee.'

"Meeting of November 14, 1939:

"'Beronio Lumber Company has order for 265,000 feet of [342] T. and G. for the Cow Palace. Told all parties concerned this material will have to be *runned* in S. F. Brother Kelly stated Symon Bros. wreckers received two carloads of trim. Brother Byrnes stated carloads of siding is coming in all over town.'

"Meeting of November 21, 1939:

"'B. A. Helbing report trying to hold the 260,000 feet of 2 by 6 T. & G. for the Cow Palace. Have been contacting Sacramento in regard to this work.'

"Meeting of November 28, 1939:

"'Carload of millwork for Smith in Daly City and Nelson on Ocean Avenue without the label. Smith agreed to go along. Buckley received about 15,000 feet of molding from a plant in San Jose without the label. Told to send this stock back or have it *re-runned*. Local No. 262 was notified and placed a picket on this shop. Symon Bros. Wreckers received two carloads of unfair material. Asked these people to go along with the program and refused. Recommends that Symon's be placed on the unfair list.'

"Meeting of December 12, 1939:

"'Brother Westby reported Symon Bros. were notified to appear before this Board to show cause

why they should not be placed on the Unfair List. Symons agreed to use local millwork and go along with the program. Brother Helbing also spoke on this case and stated Symons will ask for local bids.

“Meeting of December 19, 1939:

“B. A. Helbing reported Brother Westby doing picket duty and found two consignments one firm will have his share re-run. The firm on Bay Shore also agreed to go along and have their share re-run, after convincing these people to what the outcome would be.

“Then there is a meeting of January 9, 1940:

“B. A. Helbing reported the T. and G. for the Cow Palace is coming from an unfair firm.” [343]

“The meeting of January 16, 1940:

“The 250,000 feet of T. and G. for the Cow Palace coming from the North without the label. The lowest bidder will have to be recognized. Will have to show some kind of a protest against this material. If a picket is placed on this job, we may be interfering with the Interstate Commerce Law. Brothers Wilcox, Miller and Byrne spoke on the matter. Brother Byrne stated the picket should be placed in front of the building if there is going to be a picket. Brother D. J. Edwards stated we will be bucking the counties of S.F., San Mateo, the State and the Federal Government.”

“Meeting of January 23, 1940:

“B. A. Helbing had a phone call from the Secretary of the Mill Association in regard to the T.

and G. flooring going in on a warehouse on Third Street for the Safeway Stores. Cahill has the job and agreed to go along. Out looking for material coming into S.F. without the label. Some four sided stock coming in. Routine. Brother Kelly stated there is no exempt list and the mills are breaking down conditions by bringing in this material with the label that is being manufactured under a lower wage scale. The Conference Committee should tell the employer at the coming meetings that they are the one who is guilty of breaking down conditions by having this cheap labeled material shipped into this area.

"Meeting of January 30, 1940:

"The matter in regard to the Federal investigation was discussed. Brothers Seagrave, Wesley and Helbing spoke on the matter. All stated we should have our legal advice ready if needed."

"I want to ask counsel if 'M. and S.' means 'Moved and Seconded.'"

"Mr. Routzohn: Yes."

"Mr. Zirpoli: 'Moved and seconded that business Agent [344] Helbing hire legal advice if necessary. Carried. Brother Kelly stated the general office district C₃ of C., as well as Local No. 42 are involved if there is a case of indictment.'"

"Now, the meeting of June 25, 1940:

"Davis Hardwood shipped a load of material to San Mateo without the label. The load was sent back and all material came from the North. Routine.'"

C. E. McCONNELL

called as a witness in behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Burdell:

I am connected with E. K. Wood—a local lumber firm—and have been about a year and a half. Prior to that, I was connected with Retail Lumber Association, East Bay, in the neighborhood of a year and a half. Prior to that, Wood Products, Inc., in Oakland. I was connected with that association prior to the time it was incorporated. It was named East Bay Mill Owners' Association. It ceased to be known as East Bay and became Wood Products, Inc. in 1937, approximately. I was secretary of East Bay Mill Owners' Association. I recall negotiations in 1936 relating to execution of an employer-employee contract between the Planing Mill Owners and the Union Millmen. D. N. Edwards represented East Bay Mill Owners Association—members, practically 100 per cent, were represented by Edwards, including Boorman Lumber Company, Tilden Lumber Company and Hogan Lumber Company. Gordon Pierce represented Boorman Lumber Company at meetings of the association. C. R. Buchanan represented Hogan; also Mr. Hogan. Hill Lumber & Hardware Company was not a member, in my opinion, nor E. K. Wood Lumber Company. I believe Eureka Lumber Company was—that is questionable. Zenith Mill & Lumber Company was a member, repre-

(Testimony of C. E. McConnell.)

sented by C. I. Spears at meetings; also [345] Nels Nelson, of Hayward Mill & Lumber Company. My understanding is, the various individuals named as representing the companies, appointed Mr. Edwards to negotiate the contract referred to.

Exhibit 156 is the agreement signed for the members of the East Bay Mill Owners' Association, in September, 1936. Mr. Edwards' signature appears on it.

G. L. JIMERSON

being called as a witness on behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Clark:

I am sales manager for Algoma Lumber Company located at Algoma, Oregon. Its business is logging, sawmill and manufacture of millwork, lumber and shooks. I have been with the company 16 years, — sales manager for 9 years. I was sales manager during 1938 and 1939. The company engages in the business of millwork and has engaged in the sale of lumber and millwork and pattern work in the San Francisco Bay area. We have not been so engaged since 1939. Prior to 1939, Pyramid Lumber Company of Oakland and Jimerson-Green of Oakland and San Francisco were our chief customers. In 1936, we had two cars of lumber going to H. Lincoln & Sons that

(Testimony of G. L. Jimerson.)

were declared hot cargo, and we laid off, and then in 1939 we tried it again and had another car declared hot cargo, and since then we have laid off altogether. Knotty pine paneling was in the car. It is lumber that is used and milled to be worked for paneling in rumpus rooms. It is used quite extensively in taverns. We do not particularly specialize in that. We did help promote it, because it was used in the lower grades of lumber for which there was no market at that time. I am familiar with the price our competitors sold lumber for in the San Francisco Bay area, and with the price of such lumber in 1938 and 1939 we were selling to Pyramid. I am familiar with the price here in San Francisco in [346] 1938, approximately. It is my business to find out what the prices are in competitive markets, because we have a competitive product. I mean by "approximately," I don't know the exact amount of money. I could not say I knew definitely what the market price was in 1938 and 1939 in San Francisco. Rough lumber in San Francisco from Algoma would cost you 25 cents a thousand more than lumber run and knotty pine panels in 1938. Knotty pine panels is patterned lumber.

Cross-Examination

By Mr. Routzohn:

The shipments that were refused were all sent to H. Lincoln & Sons, located in Oakland and Berkeley. The second carload in 1939, marked "hot cargo" went to the same people. That material was not

(Testimony of G. L. Jimerson.)

marked with the union label of the United Brotherhood. At that time our mill was not organized. We have two unions now, the A. F. of L. and C.I.O. It was non-union lumber that we shipped at that time.

Thereupon, the constitution and by-laws of the Building Trades Council was introduced in evidence as U. S. Exhibit 66.

"Mr. Howland: At this time I offer only article 3 of this document marked Exhibit 66, which is the constitution and by-laws of the Building Trades Council of San Francisco, adopted June 24, 1937.

"Mr. Tobriner: It has been stipulated, has it not, that we may read in any other portion of that exhibit if we so desire?

"The Court: Yes, that is understood.

"Mr. Faulkner: There is a little confusion in the record, first he offers a book and now he only offers a part.

"Mr. Howland: I offer a part.

"The Court: The entire book is not being offered, just portions of it? [347]

"Mr. Howland: Just Article 3.

"The Court: Article 3 is being offered by the Government, and it is understood that any defendant may read any portion of that if they wish, or offer it in evidence.

"Mr. Faulkner: May we have it understood that only the parts read are deemed in evidence?

"The Court: Let that be the understanding.

"Mr. Howland: Article 3 of this constitution and by-laws reads as follows:

“Section 1. Should a craft affiliated with the Council have a grievance with an employer or employers, it shall use every honorable means towards a satisfactory adjustment of the same; and failure to do so, it may, at a regular or special meeting of the Union or Unions in the craft, refer in writing, under the seal of the Union or the Unions, the difficulty in question to the Council for investigation and action.

“Section 2. No Union shall be eligible or entitled to assistance from the Council, in case of any demands, strikes or lockouts, until it has been approved by at least a two-thirds vote of the members present at a regular session of the Council.

“Section 3. No Union or Unions affiliating with the Council shall be allowed to declare any building, shop or firm unfair until all provisions of Section 1 and Section 2 of this article have been fully complied with, and then only after such declaration has been formally made and approved in regular sessions by the Council.”

Thereupon, the pamphlet marked “Official Minutes, San Francisco Building & Construction Trades Council No. 3,” was introduced in evidence.

“Mr. Howland: I desire to offer in evidence the official minutes of the San Francisco Building & Construction Trades Council designated No. 16, of this entire exhibit marked for [348] Identification 107. I am reading that part which read as follows, and I am reading the first four paragraphs consecutively:

“ ‘The Building and Construction Trades Council of San Francisco met in regular session pursuant to adjournment in Brotherhood Hall, Building Trades Council, Thursday evening, November 30, 1939. The meeting was called to order by President Alexander Watchman at 8:00 o'clock. The roll of officers was called and the minutes of the previous meeting, November 16, 1939, were approved as printed.

“ ‘Business Representatives James E. Ricketts and John H. Smith rendered their weekly reports, which were received and approved.

“ ‘Communications. From the Bay Counties District Council of Carpenters stating that upon request of Millmen's Local No. 42 that the District Council of Carpenters declared its intention to place the Symon Bros. Wrecking Company on their ‘We Don't Patronize' List and refer the matter to the Council, that unless their dispute was amicably settled that similar action be taken. Received and referred to the Executive Board.’

“ (The document was received in evidence and marked ‘U. S. Exhibit 107.’) ”

“ ‘Mr. Howland: I offer from the minutes of the same Council, contained in Exhibit 106 For Identification, which I now offer in evidence—Official Minutes of the San Francisco Building & Construction Trades Council No. 46.

“ (The document was received in evidence and marked ‘U. S. Exhibit 106.’) ”

"These minutes are the minutes of the meeting of Thursday evening, July 28, 1938. I will read at this time but one paragraph from the first page entitled 'Credentials and Communications.'

"'From Millmen's Union No. 42, agreement with Lumber [349] Products Association and Cabinet Manufacturers' Institute of California, Inc., Northern Division. Motion agreement be approved by the Council. Carried.'"

Thereupon, Exhibit 31 for identification, being constitution and laws of the United Brotherhood of Carpenters and Joiners of America, was introduced in evidence as U. S. Exhibit 31.

"This Constitution and Laws which I have referred to says on its face, 'In effect April 1, 1929,' and at page 11 of this printed booklet under the heading 'First General Vice-President' at paragraph B the following appears:

"'His duties shall be to devote all of his time to the United Brotherhood, with headquarters at the general office. He shall have power to examine, approve or disapprove all local union, District Council, State Council or Provincial Council laws. He shall have charge and issue the label and keep a record of same in accordance with the constitution and laws of the United Brotherhood.'

"At page 57 of this same booklet under a sub-heading entitled 'Label,' the following appears:

"'K. Upon request of the First General Vice-President, an organizer shall be sent to investigate

the conditions of any mills using the label, and upon receipt of report the General President shall furnish a copy of same to the First General Vice-President.

“ ‘L. In case of any violation of agreement or grievance against an employer, the label shall be withdrawn when ordered by the First General Vice-President.

“ ‘M. The First General Vice-President, with the sanction of the General Executive Board, shall have the power to order the withdrawal of the label from any factory, shop or mill, upon charges duly made, and shall have power to regulate and investigate the issuance of the label in accordance with the constitution and laws of the United Brotherhood.’ ” [350]

Thereupon, folder identified as Exhibit 34-4 was introduced in evidence as U. S. Exhibit No. 34, with the understanding that such portions as desired could be read at any time.

“Mr. Howland: Yes, I would like to read a short excerpt from the fourth paper that this file contains, which is a carbon copy dated November 2, 1936. It is addressed to

“ ‘Mr. W. C. O’Leary, F. S. & B. A.,
Local Union No. 550,
540 60th St.
Oakland, Calif.

“ ‘Dear Sir and Brother:—

“ ‘Yours of October 29th enclosing applications

for the use of our label upon the products of the following concerns:

- Elcerito Lumber Co., Elcerito, Calif.
- Eureka Mill & Lumber Co., Oakland, Calif.
- Hayward Mill & Lbr. Co., Hayward, Calif.
- Loop Lbr. & Mill Co., Alameda, Calif.
- E. K. Wood Lbr. Co., Oakland, Calif.

has been received, together with copies of agreements entered into with these firms. These applications are quite satisfactory, and the labels have been ordered made up.'

"Skipping the remainder of the letter,

" 'Yours fraternally

and a space,

" 'FIRST GENERAL VICE
PRESIDENT.' "

Thereupon, by-laws and trade rules of Bay Counties District Council of Carpenters and Joiners of America, Exhibit No. 2 for identification, was introduced as U. S. Exhibit No. 2.

"Mr. Howland: This booklet states on its face, 'By-Laws and Trade Rules Bay Counties District Council of Carpenters and Joiners of America, San Francisco and Vicinity, With Jurisdiction in San Francisco, San Mateo, Marin and Alameda Counties. Adopted February 22, 1939, Approved by First General Vice-President, M. A. Hutcheson, May 26, 1939, In Effect May 26, 1939.'

I am reading from page 29 of this booklet under a chapter entitled "Millmen," and sub-heading en-

titled "Extract of Agreement Made With Mill Owners." [351]

"Such material as specified in agreement with employer does not need to bear a stamp, it being stock material; if, however, it is manufactured in this city, it must be stamped. It is agreed that every piece of material milled must be stamped immediately after being sent through the machine, before it is stowed away or used.

"Article II. Section 1. It is agreed by the District Council that, in conformity with the agreement between the mill owners and millmen, the District Council will refuse to handle any material coming from any mill or shop that is working contrary to the prescribed number of hours contained in the foregoing Trade Rules, or are paying less than the wage scale hereinbefore quoted, or employing other than Union mechanics.

"Sec. 3. These conditions shall apply not only to mills within the City and County of San Francisco, but to all mills in the State of California, as well as those of all other States."

Thereupon, the following portions of the minutes of Bay Counties District Council of Carpenters, exhibits for identification 109 to 113, inclusive, were introduced by reading to the jury:

"From the minutes of the Bay Counties District Council of Carpenters of the meeting of September 2, 1936, under the heading of Communications:

"From Millmen's Union No. 550, reporting on

the results of the vote taken by Locals 42 and 550 on the proposed settlement between Locals 550 and 42 and the Planing Mill owners and cabinet manufacturers in this district. The proposed agreement was read and it was moved and seconded that the District Council approve the agreement.'

"From the minutes of the District Council of Carpenters of September 16, 1936, under the heading Communications: [352]

"From Local 42, giving the result of their vote on the proposal of wages and hours and submitted to the District Council by the employers in the shops and mills. Filed for reference.'

"Minutes of the meeting of September 23, 1936, under the heading of Communications:

"From Local 550, notifying the Council that it had voted, 117 for and 16 opposed, in favor of the agreement with the Mill Owners and Cabinet Manufacturers. Noted and filed.'

"From the minutes of the same meeting under the heading of Reports, the following:

"Business agent Edwards reported that he had been out with the secretary of the Cabinet Manufacturers Association checking up the shops and mills to determine when the new scale should go into effect. Now being paid in a large number of the plants.'

"From the same minutes under the heading Unfinished Business:

"The secretary read the agreement between the

District Council Millmen's Union Nos. 42 and 550, and the Lumber Products Association, Cabinet Manufacturers Institute and East Bay Mill Owners Association. The agreement, which becomes effective retroactive to June 27, 1936, and continues in force until June 15, 1938, a period of two years, provides for \$1 per day increase in the scale until March 15, 1937, and \$8 per day from then on. Union conditions of employment are stipulated.

"From the minutes of the same organization dated February 3, 1937, under the heading New Business:

"Members are requested to look for the union stamp on mill and cabinet work and report to the business agent or secretary those jobs where unfair material is being used."

"The minutes of the meeting of February 10, 1937, under the heading Reports:

"Business Agent Edwards reported on the Buckley Sash [353] and Door Company, operating under non-union conditions and bringing practically all of their materials in from the North. It was moved and seconded that the District Council of Carpenters place the Buckley Sash and Door Company on the unfair list. The motion was adopted by unanimous vote."

"From the minutes of the same organization, February 2, 1938 under the heading Communications:

"From Millmen's Union 550, protesting the im-

portation of special run matched end T & G into this district, which should be run here by a local mill. Referred to Unfinished Business.'

"From the same minutes under the heading Unfinished Business, the following:

"The letter from 550 in relation to the importation of matched T & G was read, and it was moved and carried that in so far as the P. J. Walker Company's job for the Illinois-Owens Glass Co. was concerned, that the business agents and officers of the Council be authorized to deal with that particular job.'

"From the minutes of the same organization for the meeting of December 21, 1938, under the heading Communications, the following:

"From Local Union 42, bringing to the attention of the District Council the fact that shops and mills in outlying districts as far east as the State of Michigan are bidding on public work and private work in the City and County of San Francisco, and requesting the cooperation of the officers, business agents and delegates of the District Council to cooperate with their union in keeping this work out of our district. The officers and delegates were earnestly requested to give the millmen their full cooperation in this matter.'

"From the minutes of the same organization for the meeting of January 4, 1939, under the heading Reports, the following:

“The Council was notified that Brother Chas. Helbing, [354] formerly business agent of Local Union 42, had been elected as an additional business agent for Local No. 42 and by motion, Brother Helbing's election was approved by the Council.”

“From the minutes of the same organization for the meeting of November 29, 1939, under the heading of Communications:

“From Millmen's Local 42, requesting the Council to place the Symon Bros. Wrecking Company, 1435 Market Street, on our ‘We do not patronize’ list,—endorsed by the Council and referred to the San Francisco Building Trades Council for action.”

HARRY H. HILP

called as a witness for plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Burdell:

I am a building contractor and have been in that business almost 30 years. We did work at Treasure Island and purchased tongue and groove for use there in June, 1938. We purchased that from Daugherty Lumber Company, located in San Francisco. The flooring was inch and a half tongue and groove flooring that could be classed as millwork. I believe it comes from northern California and southern Ore-

(Testimony of Harry H. Hilp.)

gon. They purchased it from mills and sold it to us. I don't recall the names of the mills. It was delivered in box cars at Treasure Island. It was not immediately unloaded when it was delivered. I telephoned Dave Ryan and told him that the agreement of non-stoppage of work was being violated on Treasure Island, that we had some flooring to unload and that the lumber handlers would not handle it. Mr. Ryan said that the flooring was over the size that was permissible to be brought in from the north and that the lumber handlers had instructions not to unload it. He said it was unfortunate that the matter had come up; that the millowners had an agreement with the millworkers union that flooring over a certain size would have to be milled in the Bay area or in [355] San Francisco or Oakland. Mr. Ryan was very cooperative and we had a meeting. We explained that we had purchased this material without any thought of any violation and that we had a time penalty, and that the upshot of it was that the lumber handlers were instructed to unload the material and the work proceeded. We discussed that agreement under which there was to be no stoppage of work and any disputes were to be taken up and settled—I forget whether by arbitration, or in some manner so the work could not be stopped. There was such an agreement with respect to the work at Treasure Island. It applied only to work at Treasure Island.

I am a director in Associated General Contractors. I was president in 1938. I don't believe I have

(Testimony of Harry H. Hilp.)

seen paragraph 2 of Government's Exhibit 132 before. I saw the arbitration agreement and saw a clause 8 in there that more or less coincides with that. That is not what I saw. The agreement I saw was not an agreement, it was an award—a decision of the arbitrator setting up certain increases in salary and certain conditions. I don't think I have seen the part of the contract that begins "Maintenance of fair labor conditions." I saw exhibit for identification No. 70, which is the arbitration award. I have seen section 8 of that.

Thereupon, the first three pages of exhibit 70 for identification was introduced in evidence as U. S. Exhibit No. 70, and the following paragraph therefrom was read to the jury:

"Mr. Burdell: 'Maintenance of Fair Labor Conditions.

" 'It is the unanimous decision of the Arbitration Board that the new agreement should include a provision to the effect that it is deemed to be for the best interests of the community, in aid of the maintenance of fair working conditions, that the parties to the agreement adopt and abide by the business policy of refusing to handle any material coming from any mill or cabinet shop that is or shall be, working contrary to the conditions [356] of said agreement.' "

On the 20th or 21st of July, a letter came to me from the Building Trades Employers Association advising of the award and telling us of this particu-

(Testimony of Harry H. Hilp.)

lar clause. I saw a copy,—I do not think I had a copy. I called a meeting of the Industrial Relations Committee of the Associated General Contractors. The Industrial Relations Committee deals with labor relations of the contractors with their employees. I was chairman of the Industrial Relations Committee. About a day or so after we received this letter, a meeting was called, and Mr. Edwards, manager, I think, of the Planing Mill Owners in Oakland, talked to the committee and presented his views as to the reason why this arbitration board was wrong, with special reference to section 8. Two days later, I called another meeting because the San Francisco millmen and the union representatives and some of the contractors wanted to discuss further this arbitration award. I believe Jack Hart, Mr. Ennes, Mr. Edwards, Dave Ryan, Aaronson and one or two other gentlemen from the Building Trades were present and the representatives of Industrial Relations Committee. I presided over the meeting at the Sharon Building. According to the notes that I looked over this morning—the memorandum of the meeting—it was opened with the general contractors' dissatisfaction with the award, with particular reference to clause 8. The other part of the award was satisfactory. Everybody participated giving their views of why the award should stand, and the Oakland Planing Mills objected strenuously to the award, saying they were not a party to it; that they sat in at the meeting but had not voted. They wanted to have

(Testimony of Harry H. Hilp.)

a differential in their favor. The contractors' stand was that it was detrimental to millwork prices in San Francisco to not have outside competition, but the final result was that the General Contractors Association decided unanimously to abide by the decision of the arbitrator, notwithstanding the fact they [357] thought that clause 8 was wrong. Mr. Hart said the arbitration has been made and should go through on that basis—I think Mr. Ennes said the same thing. It is hard to remember if Mr. Hart or Mr. Ennes said anything about protection—I think somebody mentioned that—it might have been Mr. Ennes—that this award would give the San Francisco cabinet makers and millmen protection so that they would be on an equal footing with outsiders that came to the city to work. I do not believe we had further meetings about the thing.

Cross-Examination

By Mr. Routzohn:

We were general contractors for the Golden Gate International Exposition, and the job I had reference to was the Court of Pacifica, that is the part in which they had the Cavalcade. We were not general contractor for the entire Exposition—we were the general contractor for that portion of the buildings. We had quite a few other buildings on the Fairgrounds in addition to that. We *did* of the work that was done there possibly 15 or 20 per cent. It was tongue and groove flooring—an inch

(Testimony of Harry H. Hilp.)

and a half flooring, I believe; I am not sure. I know it came from the north somewhere. I don't think that it bore the label. I don't remember whether it did. I remember there was a discussion that the mills that had turned out some of this lumber, or maybe all of it, were union mills. I don't recall whether it had the label. I believe it was the lumber handlers that refused to handle the shipment. I do not believe the lumber handlers belong to the United Brotherhood of Carpenters and Joiners of America.

"Q. They are affiliated with what national organization, Mr. Hilp?"

"Mr. Burdell: Just a moment. That is not proper cross-examination.

"The Court: Sustained.

"Mr. Rutzehn: So I can get it in the record, didn't [358] the lumber handlers who refused to handle this lumber belong to the Hod Carriers Association?"

"Mr. Burdell: I object to that as not proper cross examination.

"The Court: Sustained."

As soon as I found out about that refusal of the lumber handlers to unload, I got in touch with Mr. Ryan and Mr. Ricketts. It was not immediately released—I believe it was about a day. It is three years ago and very hard to remember whether I got in touch with Mr. Ryan after Mr. Ricketts. I eventually reached Mr. Ryan. We had no trouble

(Testimony of Harry H. Hilp.)

after that at all, at any time. That is the only instance during the time we were constructing these buildings over there we had any difficulty whatsoever with the union.

Cross-Examination

By Mr. Faulkner:

At the meeting in the Sharon Building there was a discussion about the arbitration award of Judge Johnson. I was a delegate to Building Trades Employers Association. I have a distinct recollection that Mr. Ennes was at the meeting. I said that Mr. Edwards, of Oakland, and Mr. Hart were there, too. I just looked over the notes of the meeting and I know. I haven't the notes, but the secretary of the Association has them. Those who were present are indicated in my notes. I have no objection that counsel for the defendants see these notes. I think it would show in those notes that Mr. Hart made some remark about the arbitration award.

Redirect Examination

By Mr. Burdell:

When I talked to Mr. Ryan about the T&G at the Fairgrounds, there was no mention whatsoever of whether the material had a label on it. [359]

Exhibit for identification No. 18,—minutes of Millmen's Union Local No. 550, were introduced in evidence as U. S. Exhibit No. 18.

"Mr. Burdell: Reading from the minutes of August 27, 1936:

“The Chair then went into the Special Order of business and asked for a reading of the proposition submitted by the mill owners. The Chair then called on Brothers Ovenberg and O’Leary who gave a résumé of the conferences with mill owners. The Chair then asked for a general discussion on the proposition. Brothers Helbing and Kelley of 42—Brothers Irish—Eichwald—Sholden—Cicinato—O’Hare and others spoke, resulting in a motion being made and seconded that Local Union 550 proceed to vote by secret ballot on the proposition submitted by the mill owners. Brother Eichwald was appointed judge and Brothers Cicinato and Sholden tellers. The result of the vote was 274 Yes—37 No—and 1 blank.”

“Reading from the minutes of May 13, 1937:

“‘Brother O’Leary spoke for the Conference Committee saying the imported non-union trim on hand to be used but no more to be brought in and asked all members to be on the watch for violations and report any to 550 immediately.’

“Reading from the minutes of July 1, 1937:

“‘Following elected officers were installed: President M. D. Cicinato * * * Treasurer E. H. Ovenberg * * * Delegates to District Council J. P. Sholden, E. H. Ovenberg, W. C. O’Leary, C. H. Irish * * * Business Agent O’Leary rendered his weekly report stated he had placed a picket on some hot cargo said to be for Kliers.’

“Reading from the minutes of October 14, 1937:

“ ‘President M. D. Cicinato presiding. * * * Brother George Wilson called attention to the many doors coming here contrary to our agreement a very regretful condition.’ [360]

“ ‘Reading from the minutes of January 27, 1938:

“ ‘M. D. Cicinato presiding. * * * Business Agent O’Leary told of matched end T&G 2x6 coming in from the North in violation of our agreement. * * * New business by Brother O’Hare motion passed the secretary notify the District Council and Building Trades Council that we are opposed to the importation of matched end T&G and ask their help to stop contractors from buying or using same which is a direct violation of our agreement.’

“ ‘Reading from the minutes of February 17, 1938:

“ ‘Brother Irish gave a lengthy on the District Council saying the Council had ruled to allow matched end T&G to come into the district over our protest. Brother Ovenberg told of the Conference Committee meeting with mill owners from both sides of the Bay. They also discussed matched end T&G and were agreed that it should not come in however the decision of the District Council must prevail.’

“ ‘Reading from the minutes of April 7, 1938:

“ ‘M. D. Cicinato presiding. * * * New business by motion the secretary is instructed to write to the District Council asking said Council to endeavor to have included in future agreements for the carpenters the enforcement of the union label on all mill and cabinet work and also that local made mill and cabinet work be demanded.’

"Mr. Burdell: If the Court please, I now desire to introduce in evidence Government's Exhibit for identification 21 and read from the minutes of Millmen's Union Local No. 550.

"Mr. Faulkner: Same objection, your Honor, made to the last, and upon the further ground that these also refer to acts and conduct of the unions in connection with a business or enterprise with which the employer defendants are not parts of or parties to.

"The Court: Overruled. [361]

"(The minutes were marked 'U. S. Exhibit No. 21.')

"Mr. Burdell: Reading from the minutes of August 19, 1938:

"J. P. Sholden presiding. * * * Business Agent O'Leary reported that there was some knotty white pine hot stuff at Mr. Friedman's yard and recommended that the same be rerun here and stamped with the understanding that Mr. Friedman would abide by our agreement in the future. A Motion was made concurring in the recommendation motion amended that the matter be referred to our Conference Committee amendment carried."

"Mr. Burdell: I think I made some omissions in that, and with the Court's permission, I will read it over.

"The Court: Reread it.

"Mr. Burdell: 'Business Agent O'Leary reported the wife of Brother Jack Washburn had died and

also that there was some knotty white pine hot stuff at Mr. Friedman's yard and recommended that the same be rerun here and stamped with the understanding that Mr. Friedman would abide by our agreement in the future. A Motion was made concurring in the recommendation motion amended that the matter be referred to our Conference Committee amendment carried.'

"Minutes from the meeting of October 7, 1938:

"'Brother Irish, Chairman of the Observers Committee, says he needs more men with cars to follow trucks.'

"Reading from the minutes of November 11, 1938:

"'Brother Cambiano called a joint meeting with the employers Wednesday evening November 19 in SF. Brother Ryan representing Marin County the new agreement was discussed generally and organizer Cambiano will call another meeting soon. Mr. D. N. Edwards representing the Wood Products signed the new agreement November 10, 1938.'

"Reading from the minutes of January 13, 1939: [362]

"'J. P. Sholden presiding. * * * Our business agent O'Leary reported checking over the sidings and freight sheds and mills during the week and not finding any hot millwork by motion accepted. Brother Ovenberg reported for the Conference Committee.

"Reading from the minutes of January 20, 1939:

"'J. P. Sholden presiding: * * * Business Agent

O'Leary reported he was still checking all shops, mills and sidings for unfair millwork report accepted. * * * President Sholden reported on a meeting of the Conference Committee and mill owners held January 18 for the purpose of discussing a new agreement starting May 1, 1939.'

"Reading from the minutes of April 28, 1939:.

"J. P. Sholden presiding. * * * Conference Committee Brothers O'Leary, Ovenberg, Irish and Sholden reported on the activities of the committee with discussions on exempt materials.'

"Minutes of January 19, 1940:

"C. H. Irish presiding. * * * Recommended that a special business agent be placed in the field for the purpose of gathering data for our Negotiating Committee and also to advertise the use of local made union millwork a motion was passed to engage Brother Chas. Roe at a salary of \$10 per day.'"

WILLIAM E. HAGUE

called as a witness on behalf of the plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Clark:

I am secretary of the Central California Chapter of the Associated General Contractors of America, and have been since 1932-1933. My duties are to attend to all affairs of the Chapter, labor matters,

(Testimony of William E. Hague.)

and promoting increase construction. I act as secretary of the Industrial Relations Committee of the Chapter, and acted as secretary of the meetings of the Conference Committee of the Unions and the Contractors and the millmen, in 1938. I did not [363] take regular minutes, as a rule, I wrote down rough minutes, rough notes. Sometimes they were typed and sometimes written in pencil. These notes were written at the time of the meeting. Letters to be written with reference to the meeting or the conference, would be written after the meeting—in most cases the same day.

Documents produced by the witness were marked U. S. Exhibit No. 163 for identification,—long-hand notes or rough notes of an Industrial Relations Committee meeting made by me. Mr. Hilp and Mr. Tait and Mr. Edwards were present.

“Mr. Faulkner: The Industrial Relations Committee are not parties to this case; we object to what happened at the Industrial Relations Committee, there is no foundation laid that that was a meeting pursuant to or in furtherance of the charge in the conspiracy, and it is hearsay as to the defendants who were not present at the meeting.

“The Court: Overruled; proceed, please.”

Mr. Edwards, according to these notes and according to my memory of the meeting, the Committee wanted to find out what was the attitude of the East Bay Planing Mills on the arbitration award,

(Testimony of William E. Hague.)

and the East Bay was not going along on it, and Edwards was asked to explain why and as I recall he said they were not parties to the arbitration and explained the position of the East Bay millowners with respect to the mills in San Francisco, and that was what the Committee was after, they did not want to have one situation in San Francisco and another situation in East Bay. They wanted to find out what was the trouble in the East Bay that they could not go along. Edwards explained at length. These notes do not cover Mr. Edwards' explanation. Mr. Edwards explained that the position of the East Bay was different to the San Francisco mills, because he claimed the large mills in the East Bay shipped their products all over Northern California and also that they were in competition with mills that were clearly outside of the immediate Bay area. They were large mills—I [364] forget the name, but there were two or three he mentioned not in Alameda County who were absolutely competitive with Alameda County, and that Alameda County must be in a position where it could meet that competition to successfully keep their mills going. To the best of my recollection he thought Article VIII a very bad clause, that they would make a lot of trouble.

I think there was an agreement of some kind signed after the arbitration between the mills and unions in San Francisco, but I don't think I ever saw that agreement. I don't think there was an agreement in Oakland at the time.


(Testimony of William E. Hague.)

Mr. Ryan was anxious to see the arbitration decision upheld in both San Francisco and Alameda County. Just exactly what steps he took to enforce it in Alameda County, I do not recall.

Mr. Edwards' association is located in Oakland. I recall another meeting according to the notes, Monday, July 25, 1938. There were present Mr. Hilp, Chairman of the Board, Mr. Cato, Mr. S. G. Johnson, of Oakland, and W. C. Tait, of San Francisco; representing the planing mill owners and cabinet men, Mr. Edwards, Mr. Hart and Mr. Ennes; and representing the carpenters, Mr. Ryan, Mr. Risley and Mr. Aronson and Mr. Symons. Mr. Ryan represented Bay Counties District, Mr. Risley is business agent in Alameda County; Aronson is San Francisco business agent, and Symons from San Mateo. The meeting was called for the purpose of harmonizing, if possible, the decision that had been rendered by this arbitration board. Edwards was asked if he had been a party to the negotiations and stated he had been present but he refused to abide by the arbitration and was not an active party to it. Mr. Hilp made the statement, criticising Article VIII, which provided that no millwork could come in from the North unless it was produced at the same wages as was being paid at San Francisco. He thought it would work a hardship on business; that it would increase the cost of Millwork. I think he announced [365] as Chairman that the meeting had been called for the

(Testimony of William E. Hague.)

purpose of discussing the decision and seeing what could be done. The contractors were afraid that two wages might be set up,—one in the East Bay and one in San Francisco, and we would have trouble. Mr. Ryan said the proposal was for a two-year agreement; there was a clause for a sixty-day notice; wages and hours would come up at the end of the first year; and Edwards insisted that the East Bay was not a party to the negotiations. Edwards made the statement that the East Bay had never refused arbitration, but would prefer separate arbitration for Oakland, if necessary. He pointed out that the wage production point would govern the mills and not always cost at the job site. He said 80 per cent of the production of the East Bay mills went to outlying districts of Northern California. Some of them were doing 75 per cent out of Alameda County. Another mill he mentioned was doing half of its business outside of Alameda County, and they were in competition with local mills, not parties to the arbitration, and he would continue to pay a lower wage. Mr. Ryan said they had done the best they could to settle the question by arbitration and they thought it should apply to the four counties in the Bay Area—San Mateo, San Francisco, Alameda and Marin. He stated it would not be practical to have one wage on one side of the Bay and another wage scale on the other side. He thought it would be better for the Bay G. C. Chapter to stay out of the contro-



(Testimony of William E. Hague.)

versy and allow the millmen to settle it among themselves. Mr. Edwards did not express any objection to the Chapter coming into the picture. Mr. Edwards said the San Francisco Planing Mills could find some way to protect themselves. They could afford to abide by the arbitration, but in the East Bay they could not. They must have outside business and be in a competitive position to get that work. They could not afford to pay the East Bay wages. He meant the competition they were facing—they were [366] selling all over the State—the big mills are across the Bay. He stated he had a solution but he did not know how to arrive at it unless the contractors agreed to pay the necessary price. He said that the millworks were not allowed to come in from the North—it would put up the cost of the millwork quite a considerable amount—I think he estimated the exact cost at about \$8 a thousand.

Mr. Ennes claimed that the conditions in Oakland did not differ materially from that in San Francisco, and said he favored arbitration. He also said, "We don't want to hit the street." According to the notes, Mr. Ennes said, "We believe the arbitration has been had and the wages must be lived up to." The meeting lasted probably two hours—maybe two and a half hours.

I kept in close touch with the situation, because the members of the Chapter were keenly interested and did not like the decision that had been ren-

(Testimony of William E. Hague.)

dered, and I made notes of the conference with Edwards and Ryan, and those notes kept the Committee informed of the developments that were going along. Mr. Ryan rang me up, or I rang him up several times, and Edwards rang me up and I rang him up quite a few times.

Carbon copy of letter of October 13, 1938, out of U. S. Exhibit 163 addressed to our Industrial Relation Committee in the Bay Area, was written by me. This letter was reporting to the Committee that it was proposed to keep out doors and a list of stuff quoted in the letter, quite an extensive list of the millwork which was not to come in. Mr. Edwards, I recall, told me that he was anxious that millwork should be allowed to come in. As I recall, Mr. Ryan was anxious to see the decision of the arbitration court upheld, and that no millwork be brought into San Francisco or the East Bay from the North. I think his idea was to sell me the thought we should not interfere in the matter—it was not our business. Mr. Edwards was in favor of letting in quite a number of things listed in one of those letters, doors, etc., and a lot of other stuff he thought should [367] be allowed to come in from the North. There was a difference of opinion between the two as to his view and Ryan's view. Mr. Edwards asked our cooperation, as I recall it. We didn't interfere in the case very much, as far as I know.

I wrote the letter dated November 10, 1938, out

(Testimony of William E. Hague.)

of U. S. Exhibit 163. I had the conversation reflected in the letter probably that day or the day before. I think I talked to both Ennes and Ryan and both of them wanted a provision that no millwork should come into San Francisco from anywhere which is produced at less than \$8.50 per day. Edwards wanted to get over a six-county agreement which would permit of bringing in certain millwork. Such an agreement was not arrived at at that time, because there was a difference of opinion between the two sides of the Bay.

I wrote the letter dated November 14, 1938, out of U. S. Exhibit 163. I had the conversation reflected in the letter probably the same day with Mr. Edwards. He said that the six-county agreement had now been signed to prohibit the introduction of doors and certain millwork, and stated at that time he found himself in a minority on the six-county setup, and now felt obliged to go along on it. He stated that the East Bay planing mill owners and lumber yards were not satisfied over the agreement, as it was definitely part of their business to bring in doors and certain other millwork from the North. He found himself in the minority and in the interest of harmony he felt that he should go along. The letter refreshes that conversation substantially. The last line in the letter, "—on both sides of the Bay because he found himself in a minority and wished to assuage the high feelings of Ennes, Ryan, et al., in San Francisco," is what he told me.

(Testimony of William E. Hague.)

Cross-Examination

By Mr. Tuttle:

I received the information where I say "I am reliably informed," in a letter by me to Mr. Hilp, dated November 11, 1938, [368] probably from Mr. Muir, Vice-President of the Brotherhood of Carpenters, a national organization. The information received from him and imparted in that letter to Mr. Hilp was that Hutcheson had told Ryan the carpenters couldn't refuse to handle millwork that bears the Brotherhood stamp of millmen unions in the East Bay. That is substantially what the information was from Mr. Muir. The Brotherhood couldn't afford to, could not afford to handle millwork if it had a Brotherhood stamp. It was the position of General President Hutcheson, in October, 1938, that Brotherhood men in the Bay Area would have to handle materials which bore the union stamp, no matter where they came from.

I think very probably it was Mr. Muir who gave me the information contained in the first sentence in the last paragraph of my letter of October 18, 1938, to Mr. Hilp. That information from Mr. Muir was that the Brotherhood would have to handle millwork that bore the union stamp. The last paragraph of that letter refreshes my recollection. Mr. Muir told me that clause 2 in that proposed agreement was objected to by the General President of the United Brotherhood. I couldn't tell you

(Testimony of William E. Hague.)

what Mr. Muir told me on that subject; it is several years ago. The paragraph in the letter states really what he stated.

Thereupon, the witness read the following paragraph from the letter:

"A. 'International Vice-President, Abe Muir, has instructed the S. F. Planing Mill Owners that they must eliminate Section 2 of their agreement which provides that no millwork shall be installed in S. F. which was produced at less than the scale being paid in S. F.'"

I am not sure whether it was Muir who gave me that information, or Edwards or Ryan—one of the three.

Cross-Examination

By Mr. Routzohn: [369]

Mimeographed letter from Exhibit 163 is addressed to all contractors, builders, architects and other employers of carpenters in the Counties of San Francisco, Alameda, San Mateo and Marin. The letter states the wages for cabinet workers and millmen employed in cabinet shops, planing mills and retail lumber yards in those four counties, is \$9 per day for an eight-hour day. The wage scale was established by an impartial arbitrator, Judge Walter Perry Johnson, selected by the Conference Board of the Building Trades Employers Association and Building Trades Council. The letter is from the Bay Counties District Council of Carpenters, by Mr. Ryan, secretary. I received that letter, and the following is a part of it:

(Testimony of William E. Hague.)

“We believe it is opportune at this time to say that the District Council of Carpenters has taken the lead in the building industry in promoting the principle of arbitration in industrial disputes, and have that stipulation incorporated in all our agreements. It will indeed be unfortunate if employers seek to nullify an agreement and a wage scale set up in the manner we have just referred to. We are confident you will agree with us that we will be justified in not installing millwork and cabinet-work made by employers in this district under a lower wage scale than the established \$9 scale.”

Cross-Examination

By Mr. Faulkner:

I recall the meeting in July of 1938. I knew, in July, an award had been made by the arbitrators concerning the wage scale to be paid to the millmen. I knew before that meeting was called, the East Bay group claimed they were not parties to that award and would not be bound by it. Our group—the general contractors—are purchasers of millwork from the various mills. When the meeting was called, the general contractors were confronted with the situation where the mills in San Francisco were paying a \$9.00 rate and the mills in the East Bay were [370] paying an \$8 rate. The general contractors recognized the situation was one that undoubtedly would lead to a strike—it was a threatening situation. They called a meeting

(Testimony of William E. Hague.)

first of all with Edwards of the East Bay to get his viewpoint. As I recall from the files there, one meeting was held July 20 and another July 23, and the second meeting was called for the purpose of seeing what could be done about it before a strike. General contractors were very much concerned with what should be done about it. The award of Judge Johnson had come down earlier in the month. The second meeting in July might have been at the invitation of both the General Contractors and the negotiating committee of Bay Counties District Council. It was presided over by Mr. Hilp of Barrett & Hilp, a general contractor. Mr. Cahill is a member of Cahill Bros., General Contractors. Mr. Johnson is a General Contractor in Oakland. Mr. Tait, in San Francisco. All members of the group of which I am secretary. Mr. Edwards and Mr. Jack Hart were not members of that group. I think Jack Hart represented the planing mill owners in San Francisco. Mr. Ennes represented the cabinet people; I don't think Mr. Ennes represented the planing mill owners or the mills. Mr. Edwards represented East Bay planing mill owners. They were not members, and were there by invitation.

Mr. Edwards, whose group was paying the \$8 a day wage to millmen, was objecting to the so-called paragraph 8 in the arbitration award. He recognized that under that paragraph he would be affected. I believe in the month of November, 1938,

(Testimony of William E. Hague.)

the situation was changed with respect to the rate of wage being paid to millmen in the East Bay and San Francisco. I believe between the period of July and November, 1938, an arrangement had been made, or was about to be made, whereby all millmen, whether employed in San Francisco or in the East Bay, were to receive \$8.50 per day. I do not recall clearly on that point. I do not recall the event. As I remember, the wage of \$9 was reduced to \$8.50. What was done in the East Bay I don't know, [371] but the wage in San Francisco was reduced from \$9 to \$8.50. I remember that. I have a clear recollection the award of \$9 was reduced between those bound by the award and the unions involved. I couldn't say I recall that date. I do not remember the relationship between the employers on the one hand and union members on the other, other than what is in the letter of November 10, 1938. The sentence in the letter used to refresh my recollection as to a statement made by Mr. Ennes is, "Ennes backed up Ryan in relation to a provision that no millwork shall come into San Francisco from anywhere which is produced at less than \$8.50 per day." I could not tell you who told me at the time—somebody. My memory is not refreshed by the letter whether that purports to be a definite conversation between Mr. Ennes and me.

I do not think it is quite correct that Mr. Edwards declared to our group that he participated in the negotiations, and after they were all con-

(Testimony of William E. Hague.)

cluded and an award was made, he declined to be bound by it. He did state that he had participated in negotiations but as I understood it he never signed up to agree to the award. His position in July, 1938, was that he would not be bound by the award. That was the reason for these activities by our group.

Thereupon, papers marked Exhibit 41-4 for identification were introduced in evidence and marked U. S. Exhibit 41-4.

"Mr. Howland: Q. Contained in this file is an original letter dated December 6, 1938, addressed to William L. Hutcheson, General President, United Brotherhood of Carpenters and Joiners, signed by the Bay Counties District Council of Carpenters, D. H. Ryan, Secretary, with certain attachments thereto. I will not read the entire communication at this time. It begins, however, as follows:

"'Dear Sir and Brother: Enclosed herewith is a copy of the agreement entered into immediately following the award of [372] the Arbitration Board in the shops and mills, last July, and signed by the Cabinet Manufacturers, San Francisco Planing Mill Owners, and representatives of Locals No. 42 and 550 and the District Council of Carpenters.'

. Attached thereto is a copy of the agreement referred to, and also another paper also dated December 6, addressed to Brother Hutcheson, by way

of running comments on the attachment, and this paper that I have designated as comments contains the following:

“The agreement to which this notation is attached is the agreement that was entered into and signed immediately following the announcement of the award of the Arbitration Board in July, 1938. This agreement we propose to change and modify as set forth below, and we are submitting it to you for your approval as ratified and changed before submitting it to the employers in the shops and mills within the Bay Counties District Council's jurisdiction for their approval.”

“Paragraph No. 2: The entire paragraph No. 2 is to be eliminated from the agreement.

“Paragraph No. 17: Change to read as follows: ‘In the interest of providing employment, it is agreed that no material will be purchased from, and no work will be done on any material or article that has been made under conditions unfair to members of the United Brotherhood of Carpenters and Joiners of America, or employers of members of the United Brotherhood of Carpenters and Joiners of America, signators hereto.’ No change in the exempted list.”

“Also contained in this same file is an original telegraph addressed to William L. Hutcheson, Carpenters' Building, Indianapolis, December 22, 1938, which reads as follows:

“On December 6th mailed copy of proposed to

agreement to cover shops and mills in this district. Stop Have received no reply or acknowledgment of its receipt at General Office Stop [373] Would like to know if it reached you and if it is satisfactory.

Dave Ryan.

“Attached thereto is a carbon copy of a telegram dated Indianapolis, Ind., December 22, 1938, addressed to Mr. D. H. Ryan, 200 Guerero Street, San Francisco, California, which reads as follows:

“‘Agreement and changes submitted received and meets with approval of this office. Forwarding letter to-day.’ Signed ‘M. L. Hutcheson, for the General President.’

“Also contained in the file is a carbon copy of a letter to Mr. Ryan from the First General Vice-President dated December 23, 1938, confirming that telegraph.”

Thereupon, the Court rules that no part of the exhibit be deemed in evidence except the parts read.

Thereupon, Exhibit No. 105 for identification was introduced in evidence as U. S. Exhibit 105 consisting of following letters produced from files of Alameda County Building and Construction Trades Council.

“Mr. Howland: The first of these letters is on the letterhead of Millmen’s Local Union No. 550, dated January 29, 1938, to the Alameda Building Trades Council, Mr. Charles Gurney.

“Dear Sir and Brother:

“Millmen's Union Local No. 550 protests the importation of special run matched end T and G, it is a direct violation of our agreement with the Mill Owners, it should be made here. We ask your assistance in this matter. Thanking you in advance, I remain,

Sincerely and Fraternally,

T. H. BENNETT,

Recording Secretary.

“The letter contains a pen-and-ink notation, ‘Concurred in.’

“The second letter also on the letterhead of Millmen's Local Union 550, is dated February 21, 1938, also addressed to [374] Alameda County Building Trades Council, Mr. Charles R. Gurney, Secretary.

“‘Dear Sir and Brother,’ and reads as follows:

“‘At a meeting of the executive officers of Local No. 550 called by our President, M. D. Cicinato and held Saturday, February 19-38 the undersigned was instructed to notify the Council as follows: Our protest against the importation of 2x6 matched end T&G has been referred to our General Office and until we hear from them it is our desire that the Council take no action in this matter.

Sincerely and Fraternally,

T. H. BENNETT,

Recording Secretary, Local 550.

This letter contains a pencil notation at the bottom, "Filed."

Thereupon, it was stipulated between plaintiff and the Union defendants that plaintiff's Exhibits 157 and 158 in evidence are the minutes of the business agents of the unions represented in the Alameda County Building and Construction Trades Council in the regular course of business, and should be deemed to be introduced with the same foundation as minutes of Unions 42 and 550, and subject to the same objections.

HUBERT C. MORRIS

called as a witness on behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Zirpoli:

I live in Portland, Oregon, and am engaged in the manufacture of millwork and sash and doors. I have been in that business over 30 years. I was connected with Central Door and Lumber Company in 1936, 1937 and 1938. Central Door and Plywood Corporation was successor to Central Door and Lumber Company, and succeeded in its business in 1938. In those years, I was sales manager for Central Door and Lumber Company and sales manager and [375] and president of Central Door and Plywood Company, handling all sales. I

(Testimony of Hubert C. Morris.)

had a representative in the San Francisco Bay Area, and visited San Francisco during those years. We sold millwork in the San Francisco Bay Area under my supervision. M. A. Peel was representative here. We made sales to Symon Bros. and Eureka Sash and Door Company during that period. We make sales to El Cerrito Lumber Company and H. Lincoln & Son in 1936, 1937 and 1938. We made sales to Davis Hardwood Company and Melrose Lumber & Supply Company. We did not make any sales to that company after 1940. M. A. Peel ceased to represent us about April 1, 1940.

NORTON R. SCHONFELD

called as a witness in behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Howland:

I am a special agent of the Federal Bureau of Investigation, qualified in accounting. I have examined certain payroll records of Mullen Manufacturing, L. & E. Emanuel, Inc., Fink & Schindler Company, Braas & Kuhn and Mangrum, Holbrook & Elkus, which have been identified as exhibits. I have a summary prepared of these exhibits which indicates in the various companies there were wage

(Testimony of Norton R. Schonfeld.)

changes on certain dates and the dates on which the changes were made, and the wages before and after the change.

Thereupon, such summary was introduced in evidence as U. S. Exhibit No. 164. Payroll changes were made in the payroll records of those companies for the week ending September 24, 1936, March 18, 1937 and October 20, 1938. Prior to September, 1936, an employee worked at \$6.40 a day; after that, and up until March, 1937, he worked at \$7.40 a day; and after March, [376] 1937, he worked at \$8 per day. In October, 1938, for the first day, at the rate of \$8, on the 14th, \$9, and \$8.50 for the 18th, 19th and 20th of the month. The records of all of the firms reflected the same wage changes, except that the first date recorded in those of Mangrum, Holbrook & Elkus is July 1, 1938.

Cross-Examination

By Mr. Faulkner:

I did not find in those payroll records during any of that period, a record of payment of the men at the rate of 82½c.

Thereupon, Mr. Tuttle read from Exhibit 41-4, being letter from Mr. Ryan to Mr. Hutcheson, dated December 6, 1938, additional portions not previously read, as follows:

“Now I am going on. There is an intervening paragraph which refers to a meeting that was held between the Local Union people and the local employers, and then Mr. Ryan goes on to say:

“At the meeting above referred to they, the San Francisco Employers, insisted that paragraph No. 2 of the old agreement should be written in the new agreement.”

I pause to say that I will show in a moment what paragraph 2 was.”

“Mr. Tuttle: Paragraph 2 in the agreement which Mr. Ryan says will have to be modified is as follows: .

“It is fitting that the wording of the Arbitration Board be here quoted and its purpose and intent be and is made a part of this agreement’— now quoting the Arbitration Board—‘Maintenance of fair labor conditions: It is the unanimous decision of the Arbitration Board that the new agreement should include a provision to the effect that it is deemed to be for the best interests of the community, in aid of the maintenance of fair working conditions, that the parties to the agreement adopt and abide by the business policy of refusing to handle any material coming from any mill or cabinet shop that is or shall be, working contrary to the conditions of this agreement.’” [377]

“Now, then, Ladies and Gentlemen of the Jury, somebody in lead pencil in this enclosure that was sent by Mr. Ryan to Mr. Hutcheson, has written the word ‘out’ opposite that paragraph.

“The Court: That is paragraph 2?

“Mr. Tuttle: That is paragraph 2. We have the lead pencil word ‘out’ opposite that paragraph.

"The Court: Which you are now reading to the jury?

"Mr. Tuttle: Which I have just read to the jury. Going on with my reading of the letter, I will repeat one sentence that refers to that paragraph.

"The Court: Is there any testimony showing who wrote the word 'out'?

"Mr. Tuttle: No, but it is part of the enclosure that Mr. Ryan sent, so I assume that it was on the enclosure when he sent it, and I think it is a fair deduction it was put there by Mr. Ryan, in view of what he says in his letter:

"At the meeting above referred to, they, the San Francisco Employers, insisted that paragraph No. 2 of the old agreement should be written in the new agreement. I stated in reply that their agreement to modified paragraph No. 17 in the manner they did, nullified to a certain extent paragraph No. 2; further that when paragraph No. 2 was agreed to, practically all of the cabinet work and millwork used in this district was being made in the district, but that when Mr. Edwards started out to break down the award and the agreement, he wrote a letter to Local 550 quoting a telegram he sent to the General Office under date of August 5th as follows—This is Edwards' telegram to the General Office:

"Can millwork carrying Brotherhood of Carpenters' Label be discriminated against because of being made at a wage lower than called for in local

agreement. We know your policy but we want a positive answer to-day.' (Signed) 'Edwards.' [378]

"Then Mr. Ryan goes on: 'And reply'—this is a reply from the General Office quoted in Ryan's letter to Hutcheson:

" 'Woodwork carrying Brotherhood Label should not be discriminated against. (Signed) Meadows, For General President.'—Mr. Meadows was the Second General Vice-President of the Brotherhood. Mr. Ryan in his letter to Hutcheson states as follows:

" 'I pointed out to the Employers that copies of this letter carrying this information were sent to homebuilders, contractors, architects, and others, broadly advertising the fact that that kind of mill-work could be brought in and would be installed, and that moreover, William Hague, Secretary of the Associated General Contractors, in his bulletins sent to all of his membership, drew their attention specifically to the fact that they could bring such material in, and that it had to be installed by Union carpenters. I stated to the representatives of the San Francisco Employers that not they, but other representatives of the Employers, in order to break down the principle of arbitration and the wage scale set up by arbitration, had gone out deliberately and brought about a condition making it not advisable at the present time to even attempt to enforce the provisions of paragraph No. 2; furthermore, that the General Office, in my

presence in a meeting in their office stated that woodwork bearing the label would have to be installed regardless of the scale paid in its manufacture.'"

Thereupon, there was introduced in evidence Exhibit No. 40-20 for identification as Defendants' Exhibit D, telegram from Edwards to Wm. Hutcheson, Carpenters' Building, Indianapolis, as follows:

" 'Muir not in San Francisco. Has not contacted us important meeting tonight. Want answer. Can millwork carrying Brotherhood Label be discriminated against by Brotherhood Carpenters because of being manufactured at a wage scale lower than [379] called for in local agreement. We know your policy but we want a positive answer to-day by wire.' Signed 'Wood Products, D. N. Edwards.' "

Thereupon, Exhibit 40-21 for identification was admitted in evidence as Defendant's Exhibit E:

" 'Mr. Tuttle: It reads as follows: 'August 4, 1938.

" 'D. N. Edwards,
Wood Products, Inc.
920 Ray Building
Oakland, California.

" 'Muir enroute to San Francisco. Millwork carrying Brotherhood Label should not be discriminated against.

" 'S. P. MEADOWS

" 'For the General President.' "

Thereupon, there was read from Exhibit 41-4 for identification memorandum from Mr. Ryan's letter, relating to paragraph 2:

"Mr. Tuttle: Under the heading of 'Paragraph 2' it says:

" 'The entire paragraph No. 2 is to be eliminated from the agreement.' "

Thereupon, Exhibit 41-4 for identification, being letter from First General Vice-President to Mr. Ryan, dated December 23, 1938, was read in evidence, as follows:

" 'Dear Sir and Brother:

" 'As per our telegram to you we are accepting the changes to be made in the agreement, but with reference to your letter wherein you quote what was submitted by Mr. Edwards of Oakland, wanting to set up a Six County Conference Board, we do not feel that is in our jurisdiction, and is a matter for the Employers to reach an understanding amongst themselves, if they desire a set-up of that kind, as our instructions have been to the additional counties included in this agreement reached was that wages, hours and conditions would all be uniform for the Six Counties. [380]

" 'Yours fraternally,

FIRST GENERAL

VICE-PRESIDENT.' "

Thereupon, documents marked U. S. Exhibit 41-4 for identification were admitted in their entirety in evidence as U. S. Exhibit 41-4.

Thereupon, paragraphs 17 and 18 of the June 15, 1938, agreement were read, as follows:

“In the interest of providing productive employment, it is agreed that no material will be purchased from, and no work will be done on any material or article that has had any operation performed on same by Saw Mills, Mill or Cabinet Shops, or their distributors that do not conform to the rates of wage and working conditions of this Agreement. The purchase, working and sales of the following products is excepted:

Dowels

Panel stock

Stock Plywood Panel

Veneers

Machine carved, pressed or Embossed mouldings

Lumber, rough or surfaced

Rustic and Clapboard Stepping

Sheathing surfaced

Flooring 13/16x3—13/16x4

13/16x6—1-1/8x4

Douglas Fir—T&GV or T&GV&CV

3/8x4—3/4x4

Redwood T&GV1S—Bead 1S 3/4x4

3/4x6

“18. The purchase and sale of the following products is excepted:

Pine, Redwood and Philippine Mahogany
Doors

1 Pannel

10 Light or French

5 cross pannel

1 light 1 pannel

1 light 3 pannel

Pine Garage Doors—6 light 6 pannel

“‘Nothing herein is to be interpreted as preventing the entire production and sale of any article in its completed state to any Buyer. Nothing herein is to be interpreted as in any way interfere with any business of the Federal Government, or that of an inter-state common carrier, or any regulations of the Federal Trade Commission, or the Sherman Anti-Trust Laws.’”

Thereupon, the new paragraph 17 from the last 1938 [381] agreement, the final paragraph was read, as follows:

“Mr. Glark: Paragraph 17: ‘In the interest of providing employment, it is agreed that no material will be purchased from, and no work will be done on any material or article that has been made under conditions unfair to members of the United Brotherhood of Carpenters and Joiners of America, or Employers of members of the United Brotherhood of Carpenters and Joiners of America signators hereto.

“‘The purchase working and sales of the following products is excepted:

“‘Dowels

Pannel Stock

Stock Plywood Pannel

Veneers

Machine Carved, pressed or Embossed Mouldings

Lumber, rough or surfaced

Rustic & Clapboard

Stepping

Sheathing surfaced

Flooring 13/16x3—13/16x4

13/16x6—1-1/8x4

Douglas Fir—T&GV or T&GV&CV

3/8x4—3/4x4

5/8x4—Bead 1S3/4x4

Redwood T&GV1s—Bead 1S3/4x4

3/4x6

“The purchase and sale of the following products is excepted:

Pine, Redwood and Philippine Mahogany
Doors

1 Pannel

10 Light or French

5 Cross Pannel

1 Light 1 Pannel

1 Light 3 Pannel

Pine Garage Doors—6 light 6 pannel

“Nothing herein is to be interpreted as preventing the entire production and sale of any article in its completed state to any Buyer. Nothing herein is to be interpreted as to in any way inter-

fere with any business of the Federal Government, or that of any inter-state common carrier, or any regulations of the Federal Trade Commission, or the Sherman Anti-Trust Laws.' "

Thereupon, it was agreed that only the parts of Exhibit 41-4 which were read should be in evidence.

Thereupon, Mr. Tuttle read from section 60 of the constitution and laws of the United Brotherhood of Carpenters and [382] Joiners of America, as follows:

"Mr. Tuttle: The beginning here is: 'Label, Section 60.

"The attached design of label shall be the official label of the United Brotherhood.'

"Then there is a diagram, your Honor, about two and a half inches long and half an inch high. It says, 'Union Made. Issued by Authority of United Brotherhood of Carpenters and Joiners of America Organized 1881 Registered 1900.' And then it says:

"Each label shall have the factory, shop or mill number stamped thereon. Whenever a label is applied without the factory number thereon it shall be regarded as forged. The factory numbers, in conjunction with the name of the District Council or local union issuing said label, will thus permit recognition of the product of any particular factory in any part of the jurisdiction of the United Brotherhood.'

"From subparagraph N there is something I will read:

"It shall be the duty of all district councils, local unions and each member to promote the use of trim and shop made carpenter work, hotel, bank, bar, store and office fixtures, and of church, school, household furniture, etc., and to make generally known to the members of the local union that it is necessary to all mill and shop members and the United Brotherhood that products made in factories, shops or mills where only members of the United Brotherhood are employed should be installed by fellow members."

"Now, turning to the objects of the United Brotherhood, one section here, section 2:

"The objects of the United Brotherhood are: To discourage piecework, to encourage an apprenticeship system and a higher standard of skill, to cultivate friendship, to assist each other to secure employment, to reduce the hours of daily labor, to secure adequate pay for our work, to establish a weekly payday, to furnish [383] aid in cases of death or permanent disability, and by legal and proper means to elevate the moral, intellectual and social conditions of all our members, and to improve the trade."

"Then section 3 declares affiliation with the American Federation of Labor and then adds this sentence:

"Resolved, that members of this organization

should make it a rule, when purchasing goods, to call for those which bear the trademark of organized labor.'

"Under the subject of jurisdiction are two sentences:

"Section 6. The jurisdiction of the United Brotherhood of Carpenters and Joiners of America shall include all branches of the Carpenter and Joiner trade.'

"Then subparagraph C:

"To subordinate local or auxiliary unions, district, state and provincial councils the right is conceded to make all necessary laws for local and district, state and provincial councils which do not conflict with the laws of the international body.

"In cases where local central bodies are formed, local or auxiliary unions, district, state and provincial councils shall have power to enforce the laws of such bodies, provided such laws do not conflict with the laws of the United Brotherhood of Carpenters and Joiners of America.'

"One sentence about the power of the general president, section 10, subparagraph A:

"He shall supervise the entire interests of the United Brotherhood.'

"The subject of local autonomy. I want to cover the definition of the jurisdiction of local unions, section 25:

"Local unions where no district council exists shall have the power to make by-laws and trade

rules for their government and the members of the United Brotherhood working in their jurisdiction, which shall in no way conflict with the constitution [384] and international laws of the United Brotherhood, state council or provincial council.'

"I will then read from section 26 on the jurisdiction of district councils, their autonomy.

" 'Section 26. Where there are two or more local unions located in one city they must be represented in a Carpenters District Council, composed exclusively of delegates from local unions of the United Brotherhood, and they shall be governed by such laws and trade rules as shall be adopted by the district council and approved by the local unions and the first general vice-president.'

"Now, this finally on the subject of local autonomy, which is under the heading 'General Strikes and Lockouts.'

" 'Section 59. Job or shop strikes are to be conducted on rules made by the district council or the local union where a district council does not exist. A trade demand inaugurated by a local union affiliated with a district council must be endorsed by the district council and submitted to the general executive board for their sanction.

" 'Where a district council exists it shall adopt rules for the government of strikes and lockouts in that district, as provided for in the constitution and laws of the United Brotherhood.' "

WILLIAM GILSON

called as a witness in behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Burdell;

I am a cabinet shop owner. My company is a member of Lumber Products Association and has been since it started this last time—I think about the fall of 1938. The purpose of the association is to have a united front to deal with the unions [385] for wage scales, arbitration and so on. The association has an employee, Harry Gaetjen, authorized to negotiate and execute contracts with Millmen's Union 42. Prior to incorporation of the association in the fall of 1938, I believe there was an unincorporated association. I joined Lumber Products Association, Inc., an incorporated association, in the fall of 1938. Carl Warden or Jack Hart were authorized to sign a contract on behalf of the Lumber Products Association with Millmen's Union 42 in the fall of 1938. The members were Hart and Warden, Central Mill, Liberty Mill, Eureka Mill, Karp & Son, Erickson & Wagner, Acme Manufacturing Company, Brannan Street Planing Mill, Central. I am sure I was not a member before it became incorporated.

Cross-Examination

By Mr. Faulkner:

We make all sorts of woodwork, all sorts of cabinets, office furniture, partition work and things of

(Testimony of William Gilson.)

that kind. Very few kitchen cabinets, mostly office cabinets. I am a millman, in a sense. I belong to the millmen's association, but I don't install anything. I joined Lumber Products Association, Inc. in 1938. I didn't personally sign the agreement with the millmen's union. I saw the agreement here to-day, and that, I believe, is the first time I ever saw it. The terms were discussed with me by Harry Gaetjen at one of the meetings.

HAWLEY E. STRONG

recalled by the United States.

As I previously testified, I am an auditor and was employed in 1936 and 1938 by Mr. Edwards, the business agent of Millmen's Union 42. He said there was a contract between the union and the employers association which called for an increase of the wages as of a certain date with the proviso that any work that was accepted by the employer prior to that date was to be finished at the old rate of wage. I was [386] furnished with a copy of the contract by Mr. Edwards.

A representative of the employers association and the business agent of the union and myself proceeded to call on the employers involved. In the case of the Cabinet Manufacturers, Mr. Ennes was the representative of the employers. Mr. Edwards was the business agent.

(Testimony of Hawley E. Strong.)

We called on Mullen Manufacturing Company and spoke to Mr. Mullen, and he called in his secretary or bookkeeper. In 1938, we saw Mr. Eugene Elkus, Jr. at Mangrum, Holbrook and Elkus. I saw Mr. Stauffacher at the Fink and Schindler Company. I talked with both Mr. Sichel and Mr. Randolph at the Exposition Woodworking Company in 1938, but Mr. Sichel was the one we had our business with. We talked to Mr. Emanuel at L. & E. Emanuel. I don't remember who we saw at the Unit-Bilt Fixture Company. We saw Mr. Schulte at H. Schulte and Son. We saw Mr. Ostlund at Ostlund and Johnson. We saw Mr. Kuhn at Braas and Kuhn. We talked with Mr. Kulcher at L. Kulcher Company in 1938.

In 1936 we called on Mullen Manufacturing Company with Mr. Ennes, representative of the employers, who immediately introduced us and explained why we were there. He said, "We are here to check up and find out what work you have on hand which would extend beyond the date of the contract." The business agent said that there was not much old work here and that he thought they could agree on an acceptable date by conferring with the men in the shop. I believe that was done in that case.

We went to each of the companies and audited the books of those employers and talked about that audit to the persons named. At such times, I had in my possession a copy of the contract, but the only

(Testimony of Hawley E. Strong.)

subject matter discussed was the matter of making the audit under the terms of the contract. [387] The manufacturers I mentioned knew that the scale had been changed.

ALBERT WILLIAMS

called as a witness on behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Clark:

I started my apprenticeship in 1906 or 1907, and have been practicing as an architect since 1928 or 1929, in San Francisco, doing general commercial work. I have been doing work for Roos Bros. since 1932. I did store designing, starting back in 1935, which we did not finish until some time late in 1937. It was remodeling, installing new store fixtures and new store designs. The Men's Sports Department was contracted the latter part of 1936, I believe, and the work done in 1937.

"Q. Who installed that job?

"Mr. Faulkner: We object to all of this on the ground it is immaterial, irrelevant, and incompetent, and not within the scope of the charge in this indictment, * * * [388]

"The point of our objection is that this subject-matter does not relate to millwork and patterned lumber, does not relate to the combination charged

(Testimony of Albert Williams.)

in the indictment, does not relate to the object of the conspiracy as charged, nor does it relate in any way to the interstate commerce alleged to be involved in this case. This testimony relates to the installation, which embraces designing finished products of woodwork, electric lighting, glass in a store in San Francisco, the store being the ultimate consumer. It is not charged in the indictment, it is remote from the charge in the indictment, and we object to it on those grounds.

"The Court: I am of the opinion that these fixtures are included in the definition of millwork and patterned lumber. The objection is overruled.

"Mr. Faulkner: Your Honor, that is not my point. My point is that the installation, work of installation, is not millwork and patterned lumber.

"The Court: Installation is included, it is a part and parcel of the same thing. The objection is overruled."

The Sports Department contract was let to Walter Manufacturing Company. My recollection is that besides Walter Manufacturing Company, Fink & Schindler, L. & E. Emanuel, Mullen Manufacturing Company, and Ostlund & Johnson were bidders. My recollection is that Grand Rapids Store Fixture Company, at Portland, Oregon, had it in with a sub-bid. Their sub-bid went with this bid which was accepted. Ed Hoskins from the Grand Rapids Store Fixture Company, did the designing for the fixtures. Before the fixtures arrived for installation I had a telephone call from D. H. Ryan, Dave Ryan,

(Testimony of Albert Williams.)

secretary of the Carpenters Union. He said that the Union could not install these fixtures in San Francisco, due to the fact that they had been made outside on a less wage scale. I suggested we talk about it, and he came to the office later. At the office conversation, words were [389] said to the same effect: Mr. Ryan's general point was that he didn't think it was fair that San Francisco people should be walking the streets looking for work, while at the same time work was being sent out of San Francisco to be done in locations with a less wage scale. He told me then they would not install the fixtures. Grand Rapids Company at that time had the right to use the union label. They were what we called a union shop. I told Mr. Ryan that from where I stood it looked like the Union Label should be good anywhere, if it was a Union Label it should be a Union Label anywhere in the country. I don't remember in words what he said, but it always came back to the same thought: the less wage scale there, that men looked for work here.

Two or three days thereafter there was another conversation with him. Generally speaking, the same as the first one, except I brought up the point that Roos Bros. would not be able to continue their installation of the rest of the work until that Sports Shop had been installed. We discussed that angle of it for some time. We finally agreed if I would see the rest of the work was let in San Francisco, he would install those fixtures.

(Testimony of Albert Williams.)

The Western branch of the Grand Rapids Fixture Company is in Portland, Oregon.

Exhibit 165 for identification, is a copy of the agreement signed by Mr. Ryan and myself. The document was admitted in evidence and marked U. S. Exhibit 165.

"This is a memorandum on the letterhead of Williams & Grimes.

"Williams & Grimes

Albert R. Williams, Architect
251 Post Street, San Francisco, California.

Tel.: EXbrook 1557.

"March 22, 1937

"Memorandum of Agreement between
Albert R. Williams, Architect and
D. H. Ryan, Secretary of Bay Counties District
Council of Carpenters. [390]

"This will confirm my verbal agreement with you regarding installation of store fixtures in that certain job in San Francisco which we discussed.

"In view of the fact that you have authorized the Walter Manufacturing Company to install these fixtures made by their subcontractors in Portland, Oregon, I herewith give you my assurance that the fixtures for the remaining portion of the work will be made in San Francisco by firms employing Union labor.

.....
ALBERT R. WILLIAMS,
Architect.

(Testimony of Albert Williams.)

In view of the assurances above given, Union carpenters will install under Union conditions that part of the work contracted for by the Walter Manufacturing Company.

.....
D. H. RYAN.' "

The fixtures of the Grand Rapids Company were later installed. Grand Rapids Company were not successful on other bids. They were high. Contracts for the installation of the fixtures in the other departments went to local manufacturers. I must have notified Grand Rapids Company when I had the call from Mr. Ryan. I know Mr. Smith and Ted Hoskins. Mr. Hoskins was in and out of my office during that period, and my office notified him or told him of it. Thereafter, Mr. Smith called with reference to other work they were thinking of bidding on. About two years later, around 1939, he called on me to see if I would arrange a conference with Dave Ryan, with a view to seeing if these objections in 1936 on the Grand Rapids fixtures—

At Mr. Smith's request, I arranged a conference with Mr. Dave Ryan. Mr. Ryan came to my office first, and later on Mr. Hoskins and Mr. Smith were there. The general drift of the conversation was the same. He had said before that he still didn't think it was fair for work to be let outside of San Francisco, under a less wage scale. I didn't talk to Mr. Ryan any further [391] about it. I had the Oxford Hotel job and remember Mr. Smith calling on me

(Testimony of Albert Williams.)

with reference to some installations in it by the Grand Rapids Company.

Cross Examination

By Mr. Faulkner:

I was acting in strictly a professional capacity for Roos Bros.—not for the purpose of selling millwork or patterned lumber. I was designing and remodeling that store, which required commercial fixtures and store fronts to be installed. I believe I know as an architect what millwork and patterned lumber is. The work for which bids were called was installation of what we call fixture work and general contracting work. It included store fixtures such as show cases, wall cases, display units, etc., a certain amount of laths and plaster, paint, canvas, —anything that entered into making the installation—hardware and glass would go with the fixtures.

Mr. Hoskins of the Grand Rapids Company participated with me in the drawing of certain parts of the designs. Mr. Hoskins was soliciting the opportunity of actually bidding on the fixture work. Mr. Hoskins was not to receive a commission or a payment for aiding in the designing of the job. He was not to secure at least 10% of the work allotted in consideration for designing the work.

The designs I made were approved by Roos Bros., and I was told to go ahead. I had a visit from Mr. Ryan after the contract had been let for the men's sports section.

(Testimony of Albert Williams.)

The carriage entrance work was let to the Mullen Manufacturing Company without competition of any kind—no bids were called for on this work.

Walter Jacobi of Walter Mfg. Company is a commercial fixture man. There were about four bids on the work in the men's sports section. The Walter Mfg. Company was the low bidder. [392]

In connection with my conversation with Mr. Ryan, I worked out an agreement whereby the Walter Mfg. Company was to go ahead with the installation of the men's sports section. The balance of the work was to be given to local firms.

A number of different people were low bidders for different parts of it. They were all bidding in competition with the Grand Rapids or the Walter Mfg. Company.

The work I gave to the Commercial Fixture people after my understanding with Mr. Ryan was the work they were the low bidder on. I knew they were the low bidder when I entered into the agreement with Mr. Ryan. The local commercial fixture people were the low bidder on every part of the Roos Bros. job except the men's sports section and the carriage entrance that was not open to bids.

There was nothing in my conversation with Mr. Ryan or any union men that had any connection with awarding the carriage entrance to the Mullen Mfg. Company. I had all the bids in my possession at about the time Mr. Ryan came in; or a little before, covering substantially the entire work.

(Testimony of Albert Williams.)

Ultimately, all the work that had been bid on by the Walter Mfg. Company was installed. It bore the union label. I know the Grand Rapids people ordinarily do their work in conjunction with some local commercial fixture company who do the installing. They usually make arrangements with some independent contractor to install it.

Cross-Examination

By Mr. Routzohn:

There were 8 or 10 separate jobs upon which bids were asked for in the remodeling of the Roos Bros. store.

Redirect Examination

By Mr. Clark: [393]

Walter Manufacturing Company installed the work on the sports section with San Francisco labor and with a supervisor from the Grand Rapids people. The Walter Manufacturing Company were themselves on the job and bid on the incidental work, not consisting of fixtures, like painting and plastering. I don't recall that the bid would show that. The bid was taken from Walter Manufacturing Company, it included the fixtures. [394] The fixtures were sublet to the Grand Rapids people and were made in Grand Rapids. The superintendent was sent out, but San Francisco labor installed them—that is the usual custom. I know that the Grand Rapids figures—I remember the fourth floor—were a great deal higher than the rest

(Testimony of Albert Williams.)

of the bids—possibly around 50 per cent. I don't recall the fifth floor section. They did not bid on the other parts of the work.

Recross-Examination

By Mr. Faulkner:

Walter Manufacturing Company included in their bid the cost of certain fixtures from the Grand Rapids people. Balance of their bid was made up of painting and a great many other items. That is likewise true of the bid of Walter Manufacturing Company in other phases of that improvement. Except for the carriage entrance, Walter Manufacturing Company prepared bids for our concern that included certain fixtures and the work of installation in making the remodeling job complete. Walter was bidding on his own work and on certain of the merchandise of Grand Rapids people. Bids of commercial fixtures people included the same, based upon the same set of drawings and specifications. The only spread on bids I recall is the one instance on the fourth floor.

Redirect Examination

By Mr. Clark:

According to this paper my recollection was wrong—it says Grand Rapids—according to that statement it wasn't Walter who bid on the fixtures for the sports shop. My recollection on it has always been that the bid came to me through the Walter Manufacturing Company. You show me that, and I

(Testimony of Albert Williams.)

can't be too sure about it. Grand Rapids Fixtures come from Portland, Oregon.

Recross Examination

By Mr. Faulkner:

A great deal of the materials for the fixtures manufactured [395] here by local people come from out of the State.

Thereupon, paper from which witness refreshed his recollection was marked defendants' Exhibit F for identification.